CHILD PROTECTION REVIEW SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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CHILD PROTECTION REVIEW SYSTEM

THURSDAY, FEBRUARY 17, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 9:07 a.m. in room B-318, Rayburn House Office Building, Hon. Nancy L. Johnson (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
February 10, 2000
No. HR–15

CONTACT: (202) 225–1025

Johnson Announces Hearing on Child Protection Review System

Congresswoman Nancy L. Johnson (R–CT), Chairman, Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the new Federal system for monitoring and enforcing the implementation by States of Federal child protection laws. **The hearing will take place on Thursday, February 17, 2000, in room B–318 Rayburn House Office Building, beginning at 9:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include a representative from the Administration, representatives of State departments of children and family services, researchers, legal scholars, and advocates. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

In the early 1980s, the U.S. Department of Health and Human Services (HHS) established and operated a system for monitoring child protection systems and determining whether they comply with Federal requirements. Knowledgeable observers came to view the monitoring system as inadequate. In 1989, Congress suspended the collection of penalties resulting from the monitoring system. In the Social Security Act Amendments of 1994 (P.L. 103–387), Congress mandated that HHS establish a new integrated child protection review system that monitored compliance with State plans under Title IV-B and Title IV-E of the Social Security Act. The system was also required to allow for corrective action and to impose penalties. Regulations were required to be final by July 1995. The Administration published proposed regulations on September 18, 1998, and entertained public comments for 90 days. Final regulations were published in the *Federal Register* on January 25, 2000, and will officially take effect on March 27, 2000.

The child protection regulations establish reviews of the State child and family services activities and of the criteria States use to determine IV-E eligibility. In addition, the final regulations establish enforcement procedures for certain provisions of the 1996 interethnic adoption amendments (sec. 1808 of P.L. 104–188) and of the Adoption and Safe Families Act of 1997 (P.L. 105–89).

In announcing the hearing, Chairman Johnson stated: "We must have a child protection system that will adequately protect children and promote permanent placements in loving homes. After waiting a long time for the Administration's final proposal, I am looking forward to learning from knowledgeable sources whether this plan will get the job done."

FOCUS OF THE HEARING:

The focus of the hearing will be on the State child and family services reviews and benchmarks used to determine State progress.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should *submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their name, address, and hearing date noted on a label*, by the *close of business*, Thursday, March 2, 2000, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B–317 Rayburn House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "http://waysandmeans.house.gov".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman JOHNSON of Connecticut. Good morning, everyone. Let me start by thanking our guests and welcoming you all. I am particularly grateful that our guests are here today and have provided actually very interesting and thought-provoking testimony on rath-

er short notice. We regret that, but since the regulations go into effect March 27th, it did seem important to have the hearing as far in anticipation of that date as possible, and since we will be gone next week, here we are. So thank you very much for making it possible to have very good testimony and the kind of thoughtful attention to these regulations that is appropriate.

First of all, let me just comment about the concept of Federal oversight. I am a firm advocate of State flexibility, and those of you who have worked with me know that. But that does not in any way relieve us of our responsibility to know whether the law is being implemented and whether the resources that we have provided are being used effectively.

So oversight is extremely important. Sometimes, it is more important where there is more flexibility. So I look at these regulations and this opportunity to hold a hearing on them with great interest, and consider it one of our most serious responsibilities.

It is particularly interesting when there is no conflict, no difference of opinion on the goals of the law. Clearly, child safety, child permanency, and child and family well-being are accepted by virtually everyone as appropriate goals, the right goals. So this hearing is really not about goals. It is about looking at and gathering a wide array of opinions as to whether the regulations are going to enable us to understand what States are doing in a timely fashion and whether they are going to enable us to develop a more creative and responsive and effective partnership with the States than we had under the old law.

First, let me say that I really appreciate the tremendous improvement in the regulations since their proposed form. I thank HHS for making many, many changes and being very responsive to the thoughts and concerns of this Committee.

In addition, as I learn more about the new review system and how it works, it seems evident that a great deal of thought and work has gone into its development, both to assure that we have accurate information that directs itself to children and their lives and the outcomes of our actions in their lives, and also to system development and quality issues.

Certainly, I cannot base my judgments just on the experience of myself and my staff, as it is too limited. So that is why this hearing is very important for us to get a better grasp of what a variety of opinions in the community are, what the intentions were of the administration, what kind of partnership these regulations are going to enable us to develop in the years ahead, and most importantly the degree to which they are going to enable us to focus more effectively on children and how we are addressing the problems in their lives and how we are helping or not helping to promote positive change in their lives.

[The opening statement follows:]

Opening Statement of Hon. Nancy L. Johnson, a Representative in Congress from the State of Connecticut

I begin by welcoming and thanking all our guests. We did not give you much notice. Nonetheless, your statements are exceptionally interesting and thought provoking. Thank you.

We were in a rush to plan this hearing because the important regulation on, among other topics, federal oversight of child protection programs, will go into effect on March 27. As all of you know, there has been no effective federal oversight of

child protection programs for over a decade. After this long and unfortunate hiatus, I want to be certain that this regulation takes us a long way toward an efficient and effective child protection review system.

Let me dispense quickly with a nonissue that is often raised when Republicans start talking about federal oversight. I am a firm advocate of state flexibility. In fact, I would like to find ways to provide states with more flexibility in the child protection program this year.

But giving states flexibility does not mean surrendering federal responsibility. The decision to give states more flexibility simply reflects my belief that states and localities can do a better job of solving social problems than any highly prescriptive law we might write here in Washington.

Even so, we are responsible for making sure that states spend federal money on the problems we specify and that they mount effective programs. In a system of highly competitive states and an informed public, federal publicity that programs are failing will inevitably lead to change by the state -especially when their federal dollars are on the line.

Our oversight role is especially straightforward when we have nearly universal agreement about the goals of the program in question. In the case at hand, I believe the goals of child safety, child permanency, and child and family well-being are accepted by virtually everyone. In fact, if any of our witnesses believe there are other major goals, please let us know in your testimony.

My purpose in calling this hearing is to get as wide an array of opinions as possible on a very straightforward question: Will the new review system provide Congress and others with accurate information about the extent to which states are achieving the three goals of safety, permanency, and well-being?

I believe the final regulation is a great improvement over the proposed regulation and I thank HHS for making a host of very good changes. In addition, as I learn more about how the new review system works, it seems evident that a great deal of thought and work has gone into its development. More important, it seems to me that the system holds solid promise for providing accurate information.

But I would be very uncomfortable basing my judgments on merely my own knowledge and experience and that of my staff. That is why this hearing is so important. We can begin to build a public record that can be consulted by all interested parties to determine whether the proposed review system will do the job.

In addition, no matter how good the final regulation might be, I am certain that we will hear things today that most of us agree should be incorporated into the review. The tone I want to set is that the new system holds great promise, but we should all be committed to improving the system as we go along. I already have a few ideas that I believe would strengthen the system, and I plan to use today's hearing to see how our superb group of expert witnesses respond to my suggestions. And without doubt, our witnesses will have suggestions of their own.

So let me complement HHS for publishing a good regulation. But let me also implore you to keep an open mind about your product, to listen to states and advocates, and to work with Congress to improve the review system. We are off to a good start, but we have a long way to go.

Mr. Cardin.

Mr. CARDIN. Well, thank you, Madam Chair. This Subcommittee has no greater responsibility than ensuring the protection of our children who have been removed from homes because of abuse or neglect. Therefore, I commend you for holding this hearing on the regulations that were recently published by HHS to monitor State child welfare programs.

Those regulations were issued pursuant to a congressional mandate of 1994, so they have been a long time in coming. However, the final result appears to be a good one—a comprehensive, performance-based evaluation system for services provided to at-risk children. This results-oriented monitoring system will be three-tiered.

First, it will track aggregate statewide performance data on several key issues, including the safety of children in the child welfare

system and the median length of stay for children in foster care. Second, it will conduct on-site, intensive reviews of a small sample of child welfare cases to confirm the statewide data. And, third, it will assess whether States have implemented specific services for foster children.

Since this new review system and the corresponding Federal standards are rightly ambitious, I imagine there will be some concerns expressed by States on their ability to comply with these new regulations. In this regard, I think it is very important to understand that our objective is to get compliance, not to assess penalties. And that is very clear in the regulations that have been issued and I think there is really a new focus on that, that our effort is to help the States to comply with these standards and not to impose penalties.

I look forward to hearing from Olivia Golden, the Assistant Secretary for Children and Families, regarding her vision for the implementation of this new regulation. One particular question I would like to hear her address is whether she has adequate staff in order to implement this regulation.

Conducting on-site reviews, determining State compliance with national standards, or providing technical assistance to the States in attempting to improve their systems will certainly be very demanding on the Department's staff. Of course, I cannot think of any more deserving use for additional resources than creating a system to ensure the system of our children at risk.

Madam Chair, I look forward to hearing all the witnesses today, including our colleague from Pennsylvania.

Chairman JOHNSON of Connecticut. Well, thank you.

Now, I would like to invite our colleague, Mr. Greenwood, to come forward. Your experience before you were elected to Congress makes your opinion and your thoughts around these issues very valuable to us. Thank you for being with us.

STATEMENT OF HON. JAMES C. GREENWOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GREENWOOD. Thank you very much, and thank you for holding this hearing and thank you for giving me the opportunity to testify, and good morning.

I am here for two reasons. As Mrs. Johnson just referred to, I am a former child worker, caseworker, with the Bucks County, Pennsylvania, children and youth agency. In fact, when I first ran for the legislature, I was at a candidates event and someone stood up and said, why should we elect you? You have been a social worker all your life. And I said, after 5 years of working with acting-out adolescents, I think I am perfectly prepared to go to Harrisburg. And it has stood me well coming here as well.

The other reason I am here is because there was a very disturbing incident that occurred in my district recently and I wanted to take the opportunity to talk with you briefly about it and ask you and your staff to review the new regulations in view of these events to see that these regulations do everything that they possibly can to prevent this kind of an occurrence.

There was a fellow who moved from the State of New York into my district a few years ago, and with him he had 13 children that

had been placed in his care, some of them adopted, some of them foster children, most of them special-needs children who had been difficult to place.

He was originally a resident of the State of New York. An adoption and placement agency had placed these children with him. It turns out that when he was 19 years of age, he received his first adopted child. He was single. A 9-year-old emotionally dependent child was placed in his care, and I can tell you as a former foster care worker and as someone who reviewed potential foster parents and potential adoptive parents for placement of children, a red flag should go up immediately when a single 19-year-old male says I would like to adopt a child. There is nothing that should preclude that from happening, but that should receive considerable scrutiny.

Over the course of the time when this individual was 19 years old and 47 years old, he had 29 children in his care, some of them adopted, some of them foster children. And he was arrested for sexually molesting most of the children in his care over these years. He will go on trial later on this month.

What is at issue here, I think, is this. We correctly have taken great pains to try to find homes for children who are difficult to adopt and difficult to find foster homes. These are kids with special needs, physical challenges, mental challenges, sibling groups, all of which are older children hard to place. And we have created financial incentives for the placement of these children, and we have moved to an era of greater and greater reliance upon private agencies to do this work.

There was a time when only public agencies did the home studies, made the decisions about placement, and we have privatized a good bit of that out to agencies and much of that is working well. We also have an interstate compact process where States rely on one another to do the initial home studies and then to do the follow-up case work service where they are required to send caseworkers out periodically to check on these foster children, to check on the foster children, not the adopted children. Once a home is approved for adoption, there is essentially no further home study.

But for children in foster care, there should be ongoing, periodic, regular review of the situation. The children should be—and I used to do this—the children should be interviewed; they should be interviewed out of the presence of their foster parents to make sure that they feel free to talk.

Clearly, the system broke down here. Clearly, what happened here was that the State of New York contracted with a private agency headquartered in Massachusetts to find placements for these special-needs children. They appear to have accepted this individual virtually sight unseen as an appropriate foster parent, placed a myriad of children with him over the years, and then were involved in very little oversight.

We haven't been able to ascertain yet the extent of that oversight. I have written to Governor Pataki, of New York, to ask for a full review and I expect to have that, but clearly something didn't work here. In our desire to make sure that we find permanent homes for these special-needs children, we have perhaps erred on the side of financial incentives and erred on the side of any foster home is better than none.

What I am simply here to do this morning is to ask that you, Members of the Subcommittee and your staff, make sure that these new regulations do everything that they can to prevent this kind of occurrence in the future.

Thank you for the opportunity.

[The prepared statement follows:]

Statement of Hon. Jim Greenwood, a Representative in Congress from the State of Pennsylvania

Madam Chairwoman and Members of the Subcommittee:

I appreciate the opportunity to testify today about an alarming incidence of abuse in my district and about the federal government's role in protecting children as we provide assistance to States for foster care and adoption. As a former Children and Youth Social Services caseworker and a legislator who has strongly advocated children and adoption issues in both the Pennsylvania Legislature and the Congress, I was horrified this past November to learn that Mr. Thomas Cusick, a resident of Bucks County in my district who moved from Staten Island in January 1998, was arrested on charges that he sexually molested a number of foster and adopted special needs boys in his home. On February 28, Mr. Cusick will be tried on 37 counts of indecent assault, endangering the welfare of a child, involuntary deviant sexual intercourse, and corruption of minors. At the time of his arrest, Mr. Cusick was 47 years-old, unmarried, and did not appear to have a job. However, he did have custody of thirteen foster and adopted children with emotional and physical problems. Bucks County Children and Youth Services estimates that he has had custody of roughly 28 youngsters over the past 29 years. He is reported to have adopted his first child, a nine year-old boy, when he was only age eighteen.

Mr. Cusick assumed custody of some or all of these children in Staten Island through Downey Side Families For Youth, a private adoption agency that claims to be exclusively devoted to locating homes for special needs children who prove difficult to be placed. As I understand the circumstances, the New York City Regional Office of Children and Families contracted Downey Side to examine Mr. Cusick's home and to place these children on the agency's behalf. Mr. Cusick, by anyone's standards, was not an appropriate parent for all of these children. In response to this unfortunate incident, I wrote to Governor George Pataki of New York in January to request that his office investigate Mr. Cusick's foster and adoption-related case histories and share his conclusions with me. Fortunately, the Governor informed me on February 11 that he has directed the Commissioner of Children and Family Services to thoroughly review the placements and I expect to hear from his office in the very near future. While this tragedy may prove to be an anomaly, I believe we can safely conclude in the meantime that our child welfare system, which is designed to protect children, failed to do so in these instances.

When I was a caseworker who found suitable homes for troubled kids, part of my responsibility was to examine the home to determine if the family offered a healthy and loving environment where these children could develop to live happy and productive lives. So I know that many foster kids run into barriers to timely placement in permanent homes because they are older, in sibling groups, or have traumatic histories and associated emotional and physical problems. Therefore, I strongly supported the Adoption and Safe Families Act (ASFA) in 1997 because I empathized with those children who languish in foster care unnecessarily long and I understood the unique challenges that caseworkers face to place these children.

I have come before the Subcommittee today to discuss two broad concerns about the federal government's attention to states' child protection systems. First, during the years that these children were placed in Mr. Cusick's home, I think the federal government did not do enough to monitor cases of children in States' foster care systems. Second, I believe current child welfare procedures may be obstructing the timely and safe placement of special needs children.

I am concerned that the lack of federal attention to states' child protection systems in recent years has allowed the Tom Cusick's of the world to harm our children. Under current law, States are supposed to continually monitor the foster and adoptive placements of children. However, I would argue that the Department of Health and Human Services (HHS) has failed to enforce federal law and assess State child welfare performance for many years. I am happy to see that the Secretary has issued regulations to review states child welfare performance and I hope the new system will in fact subject States' to stricter scrutiny from the federal government. But, I remain skeptical that these regulations may not adequately address the problem of interjurisdictional placements.

Congress included language in ASFA to encourage child welfare agencies to place children outside their jurisdiction. For a variety of personal, cultural, and professional reasons, many caseworkers tend not to trust other States' standards of practice as they do their own. For instance, different States may have similar criteria for home studies, pre-placement adoptive parent education, and post-placement services; yet, human services professionals are often reluctant to cross jurisdictional boundaries because the legal and financial responsibility remains with their State or county agency after the child is placed. Ultimately, I believe current practices to place children across State lines contradicts our Constitutional principle of "full faith and credit." At a minimum, I think Republicans and Democrats alike can agree that the federal government's role in interstate adoptions should be reexamined.

I can not necessarily conclude at this time that the lack of federal review or interjurisdictional barriers were the major factors that allowed these children to be placed in Mr. Cusick's care. However, we can ask: if New York State's performance had been subject to scrutiny from the federal government under the new HHS regulations, would Mr. Cusick have been able to take in so many troubled kids only to abuse them? And, if the caseworkers in New York State did not have to factor in the burdens of interstate placement, would they have been so willing to place that thirteenth child with Mr. Cusick? Or the twelfth, the eleventh? I am sure a myriad of errors contributed to these inappropriate placements and I hope the new HHS regulations will prevent such occurences in the future, but I urge the Members of the Subcommittee and the Administration to remain cautiously skeptical as you proceed with the new system.

I hope the information about Tom Cusick has been helpful to my colleagues on the Subcommittee. I look forward to working with you and the Administration to examine these events more closely and improve the reliability of foster care and adoption services. Again, I want to thank Chairwoman Johnson and the Subcommittee Members for the opportunity to appear today. I would be happy to answer any questions you may have.

Chairman JOHNSON of Connecticut. Thank you very much, Congressman Greenwood. I know you have put a lot of time into investigating this case and that you came to that investigation with a lot of experience. Have you been able to get the information that you felt you needed in a timely fashion or were there barriers to——

Mr. GREENWOOD. No, I don't think there have been barriers. My staff did a number of things, contacted the bureaucracy in New York. We actually sent them out to Harrisburg, Pennsylvania, to talk to our foster care folks to look at the issues involved. I felt that the bureaucracy in New York was responding fairly slowly, so I wrote directly to the Governor and that got a little attention. So I think we will hear back promptly.

So I don't think that is the issue. I don't think getting answers is the issue. The question is are we, in our appropriate desire to make sure that these special-needs kids find good homes, erring on the side of, as I said, any home is better than no home. And I think that that is the reality right now.

Chairman JOHNSON of Connecticut. And are we overseeing those placements in a way that when we err in our judgment of what is a good home, we catch it?

Mr. GREENWOOD. I think we are not. I think that we are increasingly relying on private agencies to do the placement, and that is fine, but what should have happened in this case is that the private agency that made these placements—number one, I think it is extraordinary that a single man between the ages of 19 and 47 was able to have 20-some children in his care to begin with. I think

that we all talk a lot about what families mean—the best families are moms and dads, and if you can do that, that is best. But there should have been some scrutiny into this man's motivations, frankly.

Second, the private agency should have sent a caseworker to this home, and maybe many caseworkers because these children probably had various caseworkers, and should have been in that home on a regular basis; I would say a quarterly basis, at least, to talk to these children, to see how they were doing, and that seems not to have happened.

And the State agency who contracted with the private agency should have been querying the private agency with regard to their home investigations. How frequently are you down there? What are you finding? And somebody somewhere in this system should have noticed that 29 children were placed with a single male individual over the course of these years, and that, I think, should have, if nothing else, created a situation where you would have more than the usual scrutiny and not less.

Chairman JOHNSON of Connecticut. I certainly agree with all of those comments. I, in addition, am very concerned about being able to move interstate with foster children because you distance them from their original family so significantly.

Mr. GREENWOOD. Right, and this individual apparently picked up and moved from New York to Pennsylvania, taking all of these children with him. And having been a foster care worker, I had 90 children in my care at one time and they were all within my county and I know how difficult it was for me to keep tabs on all of these children when they were all within 20 miles of my office.

To think that we are going to have caseworkers from Massachusetts and New York come down on a regular basis to Pennsylvania—and the children and youth agency in my county was completely unaware of the presence of this individual and these 13 kids in his care until the arrests were made, and then they had the responsibility of dispersing all of these children in other homes.

And if you think about what makes this particularly tragic, if you think about a special-needs child who is born perhaps mentally retarded with severe physical disabilities and the first event in his life is that he is abandoned by his biological parents, placed into care, then he is placed in the care of a foster parent and then that foster parent is abusive and there is no one to talk to, no one to watch over him, and then because of the arrest the child is displaced again into yet another home, it is really tragic and it is contrary to everything we are trying to accomplish here.

Chairman JOHNSON of Connecticut. It is, and it is a perfect example of all the problems. And as we listen to these regulations, it will give us a concrete measure of what we need to address. But the interstate issues are very disturbing.

Mr. Cardin.

Mr. CARDIN. Well, Jim, first, thank you for being here. We very much appreciate the information. It makes it easier for us, I think, to understand the seriousness of the problem and the need for these national standards. I agree with Mrs. Johnson. We want to provide maximum flexibility to our States, but with the protection of children it is important that we have national standards.

You have really raised an issue, a real challenge to us. What happens when one State places the child, but the abuse happens in a second State? It is not an easy issue for us to get a handle on and it is something I think this Subcommittee is going to need to take a look at, working with the Department, to figure out a way that we can have adequate supervision and adequate oversight when the child is physically out of the jurisdiction of the State that made the original placement.

So thank you, but this won't be the last time we are going to be calling upon you.

Mr. GREENWOOD. Thank you, and let me make one other comment. When I was a foster care worker, children would be abused and come into care and I would go to court with a petition to get custody of these children, and then I would go to our foster care placement director and say, where should I put these kids?

And she was marvelous and she had a network of foster parents throughout the county, and even then some of those were marginal. Some of those, we knew there were problems with the foster parents; they had their own quirks, and so forth.

One of the things I think we ought to be looking at is what are the incentives to be a foster parent, because it is still extraordinary—the reason that this happened, the reason that 29 children were placed with a single male individual who turned out to be a child molester is because it is very, very difficult to find appropriate foster homes and adoptive homes for these kinds.

So I think, again, we need to look at what the incentives are because we need to have a system in which good, healthy couples with all the right motivations find it a good deal to be foster parents, and I think we are still falling short in that.

Mr. CARDIN. Madam Chair, I would ask that our Subcommittee be informed as to what steps New York is taking in response to this case because it seems to me the point that Congressman Greenwood has made cries out for a change in policy in New York in placing foster children. It is fine for us to implement a system, but it seems to me there should be some action taken. So I would appreciate it if you would inform us as to the response from New York.

Mr. GREENWOOD. We will do that. Thank you.

Chairman JOHNSON of Connecticut. Yes, we certainly will be interested in following this with you. But it is also a very appropriate case to hear right before we hear testimony about these new regulations because for the first time they are moving from paperwork reviews of State activity to really case reviews and trying to get a better handle on what is happening to children.

No case review system, since it is just a sample, is going to also give us confidence that absolutely every home is being overseen, and so we need to think that through. But I think also at least my belief is that States are having a harder and harder time recruiting foster families and training them to deal with the difficulties of the children that we are placing with them.

And there are some options. I know in Connecticut we are developing safe homes where large sibling groups can be put together for a period of time while their future is thought out, and they

don't then lose their parents and all their siblings at the same time.

Mr. GREENWOOD. And that is critical.

Chairman JOHNSON of Connecticut. Right.

Mr. GREENWOOD. From personal experience, I know how painful it is for a sibling group to have experienced abuse at the hands of one of their biological parents and to be yanked out of that family, taken to court, and then split up. They need each other at that time.

Chairman JOHNSON of Connecticut. And when we had testimony on the independent living bill, we had some really touching testimony on that issue. But one of the reasons I am such a big advocate of flexibility is that States are developing some group home capabilities for these kinds of children which may be a better solution than a single family, given our difficulty in actually training these families to the level of sophistication they need to care for children with such complex problems.

Mr. GREENWOOD. There is a whole other issue here and that is the issue of institutions, so-called orphanages, versus the move toward family placements—it was appropriate for us to try to move children out of the institutional setting into the family setting. But I think in the course of that, we have in some cases erred on the side of any family, however you define that, being better than any institution, and that is not necessarily the case.

Chairman JOHNSON of Connecticut. Right.

Mr. GREENWOOD. These children would have been far better off had they all been placed in a well-run institution that was family oriented than any old household that calls itself a family.

Chairman JOHNSON of Connecticut. I think we are learning a lot about those things, but we will be very interested in following this case with you, making sure you get the right information, understanding what your judgments are in it, and working with you and also with the Secretary to make sure that our changes in law, if they are necessary, or our system does protect children better than they clearly were protected in this case.

Thank you very much for being here.

Mr. GREENWOOD. Thank you for the opportunity.

Chairman JOHNSON of Connecticut. Now, I would like to welcome Assistant Secretary Olivia Golden, Assistant Secretary for Children and Families from the Department of Health and Human Services.

You have been before us before, Secretary Golden, and we look forward to your testimony and to working with you on the issues that were raised by Congressman Greenwood. Welcome.

STATEMENT OF HON. OLIVIA A. GOLDEN, PH.D., ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. GOLDEN. Thank you for the opportunity to discuss the final rule on monitoring of child welfare programs. The regulation is another major milestone in our shared commitment to protect children from abuse and neglect, ensure that foster care is a temporary setting, encourage adoption, and promote child and family well-being.

The last several years have brought about major changes in the laws governing child welfare services. Most recently, thanks particularly to your leadership, Madam Chairman, and Mr. Cardin, we were successful in passing the Foster Care Independence Act of 1999, as you just alluded to, the law that will help to ensure that young people who leave foster care without finding a permanent home receive the support they need to take on the responsibilities of adulthood.

Together, the administration and Congress have enacted other far-reaching pieces of legislation, including the Adoption and Safe Families Act, ASFA; the Multi-Ethnic Placement Act; and the Inter-Ethnic Adoption Provisions. One key accomplishment stemming from these changes has been the first significant increase in adoptions from the foster care system. In 1998, 36,000 children were adopted, up from 28,000 in 1996.

While we have accomplished a great deal, we know that there is much left to do and, of course, we just heard about that. As I noted in my testimony before you last spring, State government has ultimate responsibility for carrying out child welfare programs and for protecting children in their care and custody. But the Federal Government plays an important role in providing technical assistance and holding States accountable.

The final rule makes a critical contribution by outlining a new results-oriented child and family services review process that will serve as the Federal Government's key tool for finding out how State child welfare programs are doing and ensuring children's safety, permanency, and well-being. It also provides a framework for providing States technical assistance and helping them make program improvements, and it provides a tough but fair way to ensure accountability.

We reshaped the reviews entirely, as noted in both opening statements, with a goal of focusing on outcomes, on the actual results that child welfare systems were delivering for children rather than on process. We conducted 13 pilot reviews that have informed the development of the regulations in fundamental ways.

While we were developing the new approach to monitoring, major bipartisan child welfare legislation was enacted, the Inter-Ethnic Adoption Provisions and ASFA. So we took the opportunity to clarify provisions in those laws through this regulation, as well as updating the process for reviewing a child's eligibility for the Title IV-E Federal foster care program.

I would now like to focus specifically on the child and family services reviews. The new reviews look at how a State performs in ensuring that children are safe, that children in foster care have the opportunity to achieve timely and appropriate permanence, and that children and families who are involved in the child welfare system have their needs met in ways that promote their well-being. Holding States accountable for results in these areas is a major positive departure from prior reviews.

The reviews also examine the functioning of key systemic factors that affect the ability of State programs to serve children and families effectively, and the chart as well as my written testimony provide a full list of the outcomes and systemic factors covered in the reviews.

In making decisions about States' performance, we will use both quantitative and qualitative information obtained from a statewide assessment completed by State staff and external representatives, and including statewide data indicators that provide a broad view of how the State is performing; a sample of cases reviewed on-site in the State by a joint team of State and Federal staff; interviews with community stakeholders, such as courts; and interviews with the children and families who receive services, as well as foster families, caseworkers, and service providers.

The final regulation responds to many helpful comments we received in response to the proposed rule. For example, in response to comments encouraging us to make the process for determining State compliance more quantifiable, we have strengthened the objective elements of the regulation while retaining a focus on quality.

We also received comments on the balance in the regulation between program improvement and technical assistance on the one hand, and accountability and the imposition of penalties on the other. We are confident that States want to improve outcomes for children and families, and will welcome the opportunities to receive technical assistance and make program improvements before we withhold Federal funds. At the same time, we have strengthened accountability in the regulation, for instance, by adding provisions for gradually increasing the penalties for areas of non-compliance that remain uncorrected over time.

We firmly believe that this regulation will result in positive changes in the lives of vulnerable children and families. We are currently in the process of identifying the first group of States to be reviewed and will conduct initial child and family service reviews in 17 States per year.

In conclusion, I want to thank you for your deep commitment to this important work, and I would be pleased to answer any questions.

[The prepared statement follows:]

Statement of Hon. Olivia A. Golden, Ph.D., Assistant Secretary for Children and Families, U.S. Department of Health and Human Services

Thank you for the opportunity to appear before you today to discuss the final rule on the monitoring of child welfare programs published by the Department of Health and Human Services (HHS) on January 25, 2000. The issuance of the regulation is another major milestone in furthering our shared commitment to protecting children from abuse and neglect, ensuring that foster care is a temporary setting and not a place for children to grow up, promoting adoption for children who cannot safely be reunified with their own families, and promoting the well-being of all children and families served by the child welfare system.

As we discussed when I appeared before this Subcommittee last April, these last several years have brought about major changes in the laws and procedures governing the delivery of child welfare services. Most recently, thanks particularly to your extraordinary efforts, Madam Chairman and Mr.Cardin, we were successful in passing another important piece of legislation, the Foster Care Independence Act of 1999, which will help to ensure that young people who leave foster care without finding a permanent home, are given the supports, educational and vocational opportunities they need to take on the responsibilities of adulthood on their own. Working together in a bipartisan fashion, the Administration and Congress have enacted other far-reaching pieces of child welfare reform legislation, including the Adoption and Safe Families Act (ASFA) of 1997, the Multiethnic Placement Act of 1994 and the Inter-ethnic Adoption provisions of the Small Business Job Protection Act of 1996. Together these laws make it clear that ensuring child safety must be the paramount concern of child welfare services; that timely decisions about perma-

nency must be made for all children in foster care; and that barriers to adoption, whether based on racial discrimination, geographic boundaries, or simply outmoded assumptions, must be torn down.

One key accomplishment stemming from the changes in law and the increased attention to child welfare issues has been the first ever significant increase in adoptions from the foster care system. As you know, this past September, we made the first awards to 35 States under the Adoption Incentive program, one of the innovative reforms authorized through ASFA. In 1998, 36,000 children were adopted from the foster care system, up from 31,000 in 1997 and 28,000 in 1996.

While we have accomplished much in the past several years, we know that there is much left to do. Allegations of abuse and neglect involving nearly 3 million children are reported to child protective services agencies each year, and nearly 1 million children are found to be victims of maltreatment. Over half a million children are in foster care on any given day over. Over 100,000 children in foster care are awaiting adoptive families, and, on average, these waiting children have been in foster care for more than three years.

As I noted in my testimony before you last spring, it is ultimately State government that has responsibility for carrying out child welfare programs and for protecting children in their care and custody, through a complex system that involves many agencies, organizations and individuals. States retain significant flexibility in designing programs and services to best meet the needs of children and families in their jurisdictions. But the Federal government also plays an important part by creating a common policy framework; sharing in the financing of child welfare services; supporting research, evaluation and innovation; providing technical assistance; and perhaps most importantly, by holding States accountable.

The final rule we have just published makes a critical contribution to these last two roles: technical assistance and accountability. It outlines a new results-oriented child and family services review process that will serve as the Federal government's key tool for finding out how State child welfare programs are doing at ensuring children's safety, permanency and well-being. It also provides a framework for providing States technical assistance and helping them to make needed program improvements, and it provides a tough, but fair way to ensure accountability. Finally, in addition to implementing this new approach to federal monitoring of State child welfare programs, the final rule also clarifies key provisions of ASFA, the Multiethnic Placement Act and Inter-ethnic Adoption provisions; and implements a new title IV-E foster care eligibility review system.

Background and History of the Regulation

The final rule grows out of a 1994 congressional mandate directing the Department to revamp its system of child welfare monitoring, reflects extensive consultation and field testing, and incorporates key provisions of ground-breaking child welfare legislation passed during the time the new system was being developed. The final rule also reflects serious consideration of comments received on the proposed rule, including several from Members of Congress and this Subcommittee, which were extremely helpful in developing the final approach.

First, in 1994, as a result of widespread dissatisfaction with the prior review process, legislation was enacted that directed the HHS to develop a new monitoring system for child and family services. The Congress had already indicated dissatisfaction with the prior review process by declaring a moratorium on the Department's ability to collect penalties based on it. Specifically, the statute required HHS to regulate the requirements subject to review and the criteria used to measure compliance. In addition, the law also required the Department to provide States an opportunity for corrective action before imposing a penalty and specified that the penalty should be based on the degree of non-compliance.

We believed that the legislative mandate for change was so significant that we took the time to re-shape the reviews entirely, with the goal of focusing on **outcomes**—on the actual results that state child welfare systems were delivering for children in terms of safety, permanence, and well-being -rather than on process. We engaged in extensive consultation with the field on the conceptual framework, and we conducted thirteen pilot reviews that have informed the development of the child and family service reviews in fundamental ways.

While we were developing the revamped approach to monitoring, major bipartisan child welfare legislation was enacted: the Inter-ethnic Adoption provisions and the Adoption and Safe Families Act. We took the opportunity to clarify provisions in these laws by incorporating key elements into this regulation as well. In taking this approach, we have produced an encompassing rule that provides States with information on the manner in which their programs will be reviewed and evaluated, as

well as the criteria and requirements that must guide the administration of their programs.

Finally, we issued a Notice of Proposed Rulemaking (NPRM) on September 18, 1998 and invited nationwide comment. We received 176 letters of comment from Members of Congress, State and local child welfare agencies, national and local advocacy groups for children, educational institutions, individual social workers, providers of child welfare services, State and local courts, national and State associations representing groups of practitioners, Indian tribes, and local community organizations. In analyzing these comments, we adhered to the following principles: keeping the focus on the goals of safety, permanency and well-being in State child welfare systems; moving child welfare systems toward achieving positive child and family outcomes while maintaining accountability; maintaining our stewardship role over the use of Federal funds; enforcing statutory requirements in ways that encourage strong State/Federal partnerships and program improvements; and using the lessons learned in the pilot reviews and information gathered in the consultation.

Overview of the Final Rule

I would now like to provide an overview of the final rule, which covers four basic areas. First, the regulation outlines our response to the legislative mandate to redesign Federal reviews of State programs. The review process described in the regulation focuses on outcomes, that is, how a State performs in ensuring that:

- Children are safe and free from risks of harm;
- Children in foster care have an opportunity to achieve timely and appropriate permanency in their lives; and
- Children and families who are involved with the child welfare system have their needs met in ways that promote their well-being and strengthen their opportunities for success in life.

Holding States accountable for results in these areas is a major departure from prior reviews and we believe that this approach to monitoring will have positive consequences for children.

Second, the rule includes the penalty and corrective action components of the Inter-ethnic Adoption provisions, which will assist us in enforcing its provisions.

Third, the rule also implements certain key aspects of the Adoption and Safe Families Act that are directed at improving States' efforts to achieve safety and timely permanency for children.

Finally, we have also updated the reviews of a child's eligibility for the title IV-E Federal foster care program. This final rule clarifies the statutory eligibility provisions, and also incorporates several requirements of the Adoption and Safe Families Act into the reviews.

I will now provide a more detailed look at each of the four sections.

Child and Family Service Reviews

By focusing on outcomes, the new reviews will determine what is actually happening to children and families as a result of their receipt of child welfare services, including child protective services, foster care, family preservation and family support, and adoption services. We will review State programs on the following seven outcomes:

- Children are, first and foremost, protected from abuse and neglect;
- Children are safely maintained in their own homes whenever possible and appropriate;
- Children have permanency and stability in their living situations;
- The continuity of family relationships and connections is preserved for children;
- Families have enhanced capacity to provide for their children's needs;
- Children receive appropriate services to meet their educational needs; and
- Children receive adequate services to meet their physical and mental health needs.

The reviews also examine the functioning of key systemic factors that affect the ability of State programs to serve children and families effectively, including the State's capacity to generate automated information on the children it serves; the implementation of a case review system and quality assurance procedures; staff training and the availability of a range of services for children and families; the State's relationship with and responsiveness to the communities it serves; and the recruitment of foster and adoptive families.

In making decisions about the States' performance in these areas, we will use both quantitative and qualitative information that is obtained from several sources:

- A statewide assessment completed by State staff and representatives from outside the State agency in order to assure accountability and balanced perspectives on the issues;

• Statewide data indicators that provide a broad view of how the State is performing and that are based on the ASFA outcomes measures, such as repeat maltreatment of children, length of stay in foster care, and the length of time it takes for children to achieve adoption or reunification;
• A sample of cases selected randomly that is reviewed on-site in the State by a joint team of State and Federal staff;
• Interviews with community stakeholders, such as courts, children's legal representatives, foster families, and other agency representatives; and
• Interviews with the children and families who receive services, as well as the foster families, caseworkers, and service providers involved with these children and families.

We are very pleased that we have retained the features of the child and family service reviews that States and other commenters supported most strongly in their comments on the NPRM. These include:

• A timely outcome-based approach to reviewing child and family services, with a focus on the quality of services
• A tough but fair accountability process with an emphasis on program improvements, including opportunities for the States to have penalties suspended and rescinded if they make required improvements.
• A focus on State and Federal partnerships resulting from jointly reviewing programs and developing program improvement plans

The final regulation includes a number of changes that respond to the many extremely helpful comments we received about how best to design the process to accomplish these shared goals. For example, a number of commenters on the NPRM suggested that we increase the sample of cases reviewed on-site. However, a key lesson we learned in the pilots was that an extremely intensive on-site review, including interviews with key participants such as the child and the foster or adoptive family rather than just a review of what is already in the case files, is critical to developing good information about the real outcomes for children. We also learned in the pilots that high quality reviews are so time-intensive that we could not realistically increase the sample and maintain the quality of review. To balance these competing concerns and respond fully to the comments, we have kept the small but intensive sample as one key source of information but at the same time considerably strengthened a second source of information—a rigorous statewide assessment that looks at key statewide performance data. In those cases where the statewide assessment and the on-site review give different results, we have incorporated a process for resolving discrepancies between the statewide assessment and the on-site review, including giving States the option of going to a larger sample.

Similarly, several comments, including some of the comments we received from members of Congress, encouraged us to make the measures by which we determine a State's compliance more measurable and quantifiable. We found these comments very helpful and have responded by strengthening the objective elements of the regulation while at the same time retaining a focus on necessarily subjective judgments of quality in the intensive review process. Among the specific statewide data indicators that we have included are measures of repeat maltreatment, the length of time children spend in foster care and the length of time it takes for children in foster care to achieve permanency, either through adoption or reunification. We will establish national standards for each of the statewide data indicators and use the review process to help all States improve their performance and achieve the standards. Other steps we have taken to increase objectivity include strengthening the statewide assessment procedures, defining more precisely how the States will be rated on the systemic factors under review, and strengthening the procedure for resolving discrepancies between information in the statewide assessment and the on-site review. We believe these steps will enable us to retain the qualitative focus of the reviews and to increase objectivity.

Finally, we received comments on the balance in the regulation between program improvement and technical assistance on the one hand and accountability and the imposition of penalties on the other. We are confident that States want to improve the outcomes for the children and families they serve, and will welcome the opportunities to engage in program improvement planning that are a part of this regulation. As required in the 1994 statute, we have included opportunities for States to receive technical assistance, to make improvements where needed, and to correct areas of non-compliance before we withhold Federal funds.

At the same time, we have strengthened the accountability provisions in the final regulation. For example, we have added to our proposed penalty structure for noncompliance provisions for gradually increasing the penalties for those areas of noncompliance that remain uncorrected over time. The graduated penalty provisions demonstrate our seriousness about working with States to ensure that they under-

take program improvement efforts that lead to lasting changes, not short-term fixes for problems. Accountability is also enhanced by including community representatives who are external to the State agency in completing the statewide assessment and participating in the on-site reviews.

Multiethnic Placement Act (MEPA) and Inter-ethnic Adoption Provisions

I would now like to discuss the second part of the regulation, which addresses the enforcement, penalty, and corrective action processes for violation of the Inter-ethnic Adoption Provisions. As you know, the 1996 Inter-ethnic Adoption Provisions are aimed at preventing discrimination in foster care and adoptive placements. The law prohibits delaying or denying the placement of a child with a prospective foster or adoptive parent on the basis of the child's or the adult's race or ethnicity. The statute also outlines penalties for violations of the law.

Both ACF and the Office of Civil Rights (OCR) have been rigorously enforcing MEPA since its enactment and the Inter-ethnic Adoption Provisions. For instance, in fiscal year 1999, OCR conducted over sixty-eight activities including complaint investigations, compliance reviews, training and technical assistance. This regulation furthers our efforts by clarifying how the enforcement process works and the penalties associated with violations.

The penalty process follows the statute closely. States found to have discriminated against an individual will be assessed a penalty consistent with the statute. If there are violations, not against an individual, but associated with the State maintaining a policy, statute, or procedure that would result in a violation against an individual if applied, the State must take corrective action within six months to avoid the assessment of a penalty.

The Adoption and Safe Families Act (ASFA)

The third part of this regulation is its implementation of certain provisions of ASFA. The ASFA made a wide range of reforms to Federal child welfare law, by emphasizing the necessity of ensuring children's safety; by shortening the time frames for making permanency decisions for children in foster care in recognition of their developmental needs and sense of time; by ensuring that permanency planning begins the moment a child enters foster care; by emphasizing the importance of results and accountability; and by encouraging innovation in the delivery of child welfare services.

The new regulations further the implementation of ASFA in two ways. First, we have incorporated the core principles of ASFA, that the safety and well-being of children must be the paramount concern in decision-making and that foster care is a temporary setting and not a place for children to grow up, into the core procedures and measures of the child and family services reviews and the title IV-E foster care eligibility reviews. In addition, the regulation specifically addresses and clarifies a number of ASFA provisions.

- The regulation includes the ASFA requirement that States file a petition to terminate parental rights for children who have been in foster care for 15 of the most recent 22 months, abandoned infants, and children of parents who have committed certain offenses, unless an exception applies. We have made it clear in the regulation that there are no blanket exemptions from the termination of parental rights requirement, and we emphasize that States must make decisions not to pursue termination on a case-by-case basis. We have provided some examples of situations in the regulation that may constitute a compelling reason for not filing a petition to terminate parental rights, such as a situation involving an unaccompanied refugee minor.
- With regard to the reasonable efforts provisions in ASFA, the regulation clarifies that States can define in State law the "aggravated" circumstances under which the State is not required to make reasonable efforts to prevent removal or to reunify a family due to safety considerations. We fully supported State flexibility with regard to this provision.
- We also clarified in the regulation that States are now required to obtain a court order at least every twelve months to show that the State made reasonable efforts to finalize a permanent plan for the child in a timely manner, whether the plan is to reunify the child and parents, or achieve permanency through adoption or legal guardianship.

Title IV-E Reviews and Other Foster Care Requirements

The fourth major area included in the regulation is the title IV-E eligibility reviews. In these reviews, we exercise our stewardship role by ensuring that Federal funds are used only for eligible children who are placed with eligible providers. This is a critical review since many of the child protections included in ASFA, such as

reasonable efforts provisions and criminal background clearances on foster and adoptive parents, are addressed in the title IV-E foster care reviews.

Among the foster care provisions we clarify in the regulation are the requirements relating to licensure of foster family homes as a prerequisite for the receipt of title IV-E foster care payments. The regulation clarifies that States must use the same licensing or approval requirements for all foster family homes, whether they are relative or non-relative foster homes. States may make some exceptions for relative homes in areas that do not affect the safety of children, for example, waiving a requirement about the minimum square footage of the home. In order to allow States a period of time to transition to the new requirements, the regulation allows States six months to bring all foster family homes into compliance with their licensing standards before we will withhold funds on that basis.

Through the regulation, we are also implementing the requirements for criminal background clearances on foster and adoptive families prior to a child's placement. Unless a State opts out of the requirement through the governor's action or the passage of a State law, the statute requires States to conduct criminal background clearances on prospective foster and adoptive parents as a pre-condition for the receipt of title IV-E Federal foster care funds.

Next Steps

We are very excited to be implementing this regulation as we believe that it will result in positive changes in the lives of vulnerable children and families. We are currently in the process of identifying the first group of States to be reviewed. Among the criteria that we are using to determine the order in which States will be reviewed through the child and family services review process are:

- States with identified child safety issues should be early in the schedule;
- States that have indicated a need for technical assistance to improve their programs should be early in the schedule; and
- States that were reviewed through pilots can be reviewed later, in the absence of a strong need under the first two criteria.

We will conduct initial child and family service reviews in 17 States per year, beginning immediately to work with the group of states that will be completed in FY 2001. We expect that this group will complete the statewide assessment this year and be ready for on-site reviews early in FY 2001. We will also begin conducting the new title IV-E eligibility reviews and expect to conduct 10 reviews during the current fiscal year. Over the next four years, we will conduct both types of reviews in all 50 States.

In addition to implementing the new reviews, we are also, of course, moving forward in the full range of other activities needed to further our agenda in the child welfare area. We are continuing to provide technical assistance to States in the implementation of ASFA and MEPA and ensuring that their State laws are in compliance. We will again be working with States to award additional child welfare waiver demonstrations that can tell us about new ways to finance or deliver services to children. We will also be working with States to implement the provisions of the expanded and improved Independent Living Program. There is much work remaining, but we are committed to continuing to do all we can to improve the lives of the thousands of children and families in our nation's child welfare system.

In conclusion, I would like to thank all of the members of this Subcommittee for your efforts and your ongoing commitment to this important work. I would be pleased to answer any questions you may have.

Chairman JOHNSON of Connecticut. Thank you very much, Secretary Golden. I think this does represent a great leap forward in Federal oversight regulations and has the potential to develop a partnership between State agencies, providers, and the Federal Government that could be very fruitful and very positive.

Ms. GOLDEN. Thank you.

Chairman JOHNSON of Connecticut. I was curious as to why your measure is going to be 95 percent of cases in on-site review for substantial conformity. What is the logic of 95 percent?

Ms. GOLDEN. Well, let me try to lay out the pieces of the review and how they fit together to determine a State's substantial con-

formity because one of the key features—and we have a chart up there; I don't know if we have placed it so that you can see it. But one of the key features of the reviews is that we use multiple sources of information and bring them together. I think you are referring to the standard for substantial conformity for the on-site reviews in the second and subsequent review cycles, so let me tell you a little bit about how the multiple pieces come together.

The first element of the child and family service reviews that is really important to answering that question is that we don't have an all-or-nothing pass/fail. What we are doing—and I think the previous testimony really illustrated why it matters so much—we are looking at multiple outcomes and at multiple aspects of service delivery.

The list is there and you probably can't see it, but we are looking at seven outcomes, including safety, including permanence, and at seven systemic factors like case review system, quality assurance system, and licensing and recruitment for foster parents. So the first thing is it is not all-or-nothing. We are looking at seven outcomes and seven systemic factors, and we expect that most States will have areas of strengths and areas they need to improve within that.

The second part of the answer is that we are bringing together information from a statewide assessment—that is the first box there—and an on-site review because what we have learned about looking at outcomes is that no single source of information tells you everything you need to know about whether children are safe. So we will be looking at statewide information and looking at whether States, based on that information, meet national standards in those areas where we have good national data. Where we don't have national data, we will be working with State information. So we will have that piece.

Then comes the on-site review where we will be intensively looking at a sample of cases, not only the paper in the folder but also talking with people. And as you note, as the reviewers work on those cases, they are going to be looking—and I believe it is 90 percent of the cases the first time, 95 percent in subsequent reviews—at whether in each of these areas they see evidence of success. So that is going to be one of the pieces of information.

If that information is different from the information in the State standard we have a means to resolve the difference. Let me just give you an example. On safety, one of the areas where we have good national data is re-abuse rates for children who have been abused or neglected. We have good national data, so we can say to a State, based on State performance, this counts as substantial conformity or it doesn't.

And supposing we had a State that succeeded based on the statewide indicator, but we went into the cases in the on-site review and found fewer cases than the required percent that were successful. We are trying to put those different pieces of information together and so we have a discrepancy resolution step. What we have said is if the statewide information and what we get in an individual case review aren't the same, if we find that it is successful statewide but there is a problem in the individual place, then we would

try to resolve that with the State and understand what was going on.

So, for example, if a State said the reason only half of our cases were successful in this location is that what you found is a fluke; it is a particular supervisor or it is a specific problem, it is not consistent with the State information, then we would go to a bigger sample or other information.

So I think that the fundamental answer is that as we went through the pilots, we concluded that for the intensive reviews we couldn't say that every case has to demonstrate to us that it operated consistent with safety. But we need a high standard and we have a protection against it being a fluke because we are putting it in the context of this other information.

Is that helpful?

Chairman JOHNSON of Connecticut. It is helpful, and I think one of the strengths of this set of regulations is that you are looking at multi-sources of information, and within each source you are looking at multi-factors.

Ms. GOLDEN. That is right.

Chairman JOHNSON of Connecticut. I do worry about 95 percent because it only leaves 5 percent for improvement and when you have a system like that, you tend to get—I mean, if it is a very good system, maybe it doesn't work out quite to 95 percent and you are going to have a corrective action plan or you are going to have an improvement plan.

What we hope will come out of these is even if you are found in substantial conformance, through this process the State will have a pretty clear indication of some of the areas in which it needs to improve. So I see this as a sort of continuous improvement model, and that is why I like the multi-sources and all the things we are considering, and the more flexible penalty process and the technical assistance and all those things, because in this area there is no State agency—I don't care how perfect they are, how well-funded they are, how hard they train their employees. These are difficult kids, these are difficult situations, and in most instances things aren't going to work out perfectly.

So it is a strength to look at so many sources of information and so many aspects within each data set or each oversight action. And I appreciate that you need some definition of substantial conformity, but I am troubled by the 95 percent. I think particularly when you look at the number of States that have been under court order and the minimal impact that court orders have had on children and the maximum impact they have had on bureaucracy, we really have a system that has been under extraordinary pressure from every source and a lot of outsiders telling it exactly what to do.

I think this is exactly the right approach not only for us to know what is happening, but also for us to be a good partner in developing better systems and better oversights and better outcomes for kids.

Ms. GOLDEN. The one other thing I would say about that specific percent is that that is about the judgment of reviewers as they look at cases about whether everything possible was done to achieve that outcome. Obviously, we received comments on both sides about whether people were worried reviewers would be too generous or

would be too strict. And we have tried to work on that by building in some provisions for them to de-brief.

But I think one thing that might reassure you somewhat is that we do have that process. We thought about what to do if the findings in the case review are not consistent with what we find in the statewide information, either direction—if we find that there is a problem in the intensive review that doesn't show up in the statewide information, or the other way around, we thought about whether we could just pick one of them. And we realized we couldn't, in good conscience, do that. So we have built in a way to bring the information together.

So if your concern were to happen and the reviewers to judge in a very strict way and that standard were to be too tough and the State did well on the statewide assessment, there would be the opportunity to bring those pieces of information together and discuss them. So I am hoping that will be helpful.

Chairman JOHNSON of Connecticut. Well, I will be interested in comments on this in the rest of the hearing.

We also in recent legislation have required States to set up citizen review boards, and by June every State should have set up at least two citizen review boards. What role will they play in this whole process of oversight?

Ms. GOLDEN. Well, we got a very useful letter of comments from the National Association of Foster Care Review Boards, and there are a number of elements of the rule that I think will be helpful. We do require in the stakeholder interviews that administrative review boards are a required entity to be interviewed.

We also have a number of other opportunities for input into the process, and we also responded. Their comments, as well as other people's comments, asked us to make sure there was more objectivity in the process and that, consistent with partnership, we also made sure that the process wasn't driven by people with a stake in it.

So we have in the final rule increased out reliance on the national information, as well as what is available in the State. We have built in opportunities for stakeholder interviews, not only broad community stakeholders, but also foster families, for example, who would provide services in individual cases. So we have built in a number of opportunities for outside interaction, including particularly interviews with the review boards.

Chairman JOHNSON of Connecticut. And do you think you have the resources to carry out these reviews?

Ms. GOLDEN. We are ready to go. We are right now out there talking with the States and making the choices which we expect to make this spring about the first cohort. And we are going to be moving to do the statewide assessment work with them, and we are then moving to the intensive on-site reviews.

We have a lot of information that will let us plan the on-site reviews. We know from the pilots that we will need about 25 people in there for a week, a mix of Federal staff, State staff, and peer reviewers. I do think that one important thing for you to know is that we are expecting to do that, make the plans for this year consistent with this year's budget. For next year, our plans are con-

sistent with the President's request for our administrative resources in fiscal year 2001.

As an agency, ACF has been getting smaller in terms of our staffing over the last few years, and we have been seeking to stop that decline and be able to maintain our staffing. The President's request for fiscal year 2001 would stop our decline in staffing and enable us to have some modest increases for this and other priorities. So we would certainly value your support in being able to take those modest steps which will help us.

Chairman JOHNSON of Connecticut. Have you begun to train your regional staff people?

Ms. GOLDEN. We have begun to train our regional staff people, and we also are, as I say, right now in the process where the regions are talking with the States so we can pick the 17 States we will start with. My long testimony offers the criteria that we are using, but we are not waiting. We are eager to move ahead because I think we share your views and those of Mr. Cardin that this is really an important step.

Chairman JOHNSON of Connecticut. And just last on a slightly different subject, this Committee is responsible for working as part of the team to implement the Hague Treaty on Inter-Country Adoption. In the House version, HHS would oversee the accreditation process of adoption agencies so that they can facilitate Hague adoptions. In the Senate version, the State Department would oversee the accreditation process.

Does the administration have a view on which approach should be taken to accreditation?

Ms. GOLDEN. Yes. The administration's position, and also the administration's proposal has been that HHS, because of our extensive experience in adoption and child welfare, should oversee the accreditation function specifically. We would carry it out through one or more private entities, but we would have to be responsible for the oversight and for the implementation. HHS and the State Department are in agreement on that. It is the administration position, so we would be eager to work with you on that issue.

Chairman JOHNSON of Connecticut. Thank you.

Mr. Cardin.

Mr. CARDIN. Thank you, Madam Chair.

Secretary Golden, first of all, congratulations, good work.

Ms. GOLDEN. Thank you.

Mr. CARDIN. This is, I think, very good news for our children.

Ms. GOLDEN. Thank you.

Mr. CARDIN. You gave a very diplomatic answer to Mrs. Johnson on resources. It is our responsibility to really oversee and to at least explore what is necessary resources in order to implement this regulation. And I applaud you because I think this process is one that gets maximum input from all of the constituency groups and allows for changes in a system that will be much more sensitive to the needs of children.

Ms. GOLDEN. Yes.

Mr. CARDIN. But it is very labor-intense, and I am concerned that with a budget that has been declining and is, as you said, a modest increase whether you have the resources and personnel,

training dollars, and so forth, in order to implement this plan in a timely way.

And I would ask that you make available to us what is necessary in this regard so we can evaluate it and act as Congress should act in order to at least make these points known that if we are serious about a Federal role in overseeing safety of children who are in foster care that we have a budget that implements that.

Ms. GOLDEN. We will certainly do that. Let me say a little bit about what it is that gives me confidence, at the same time obviously that it is a major task. The first is that we are going into this with more knowledge than we normally have when we go into something new because we have carried out the pilot reviews. So we are able to plan around concrete numbers, around knowing how many people we will need on-site.

It will be a partnership. There will be Federal reviewers, State reviewers, and peer experts whom we will be bringing to the table. And on the technical assistance side, we work primarily through outside experts, our national resource centers. And for that what we have to have is a core of staff, not a lot of staff, but a core who are effective and able to link States up with the technical assistance resources.

So I feel very confident that we are moving forward on it and planning for it. I do really appreciate your commitment because I do think that the President's request for 2001 and the ability to stabilize our past decline and have that modest increase is really important to us.

Mr. CARDIN. Well, let me ask you another question. As you phase in this regulation, how will you decide what States will be your initial focus? Is that going to be at all influenced by your staff support, budget, or what standards will you be using to determine how the States line up? Are any States volunteering to come first?

Ms. GOLDEN. States are volunteering, as I am sure you will hear later in the testimony, and we are having to assess how the volunteers line up with the criteria. As my long testimony noted, there are three criteria we are using.

First of all, States with child safety issues that we know about ought to go early. Second, States that have identified technical assistance needs ought to go early. And, third, States that we have been to recently through a pilot we ought to be able to do later, unless there is kind of an urgent need under one of the first two criteria. So those are the criteria we are using. We are now in conversations with the States and we expect to make decisions this spring. We haven't made them yet.

Mr. CARDIN. Well, again, we appreciate your keeping us informed as that process unfolds as to how those decisions are being made.

In response to Mrs. Johnson's question, you indicated that as you do a sample, if you find a discrepancy, you may do a larger sample in order to confirm or to find out the information. In the next panel, there are going to be witnesses who question whether 30 to 50 cases is an adequate number to do a sample. And I guess the concern is that, OK, if you do the 30 to 50 sample and you don't find anything unusual, you might move on when there still might be a problem in that State because the sample size was inadequate.

How comfortable are you with this 30 to 50? It seems to me it is a relatively small number.

Ms. GOLDEN. What we do in the reviews, and the reason that I think we have got the right mix is we bring together information from different sources. And one of the things that I found very useful in reading the testimony of the next panel is that there are both concerns expressed about a small sample and concerns expressed about statewide data. And the reason we put them together is that neither works right alone, but when you put them together you get the best information that you have.

We received comments about the sample size and we spent a lot of time considering those. What we concluded was that what we learned from the pilots is that the intensive on-site reviews tell you an enormous amount not only about outcomes for children, because there are some outcomes that we simply can't get through the statewide data consistently in all States, but they also tell you a great deal about why.

So, for example, in the statewide indicators let's take the example of you found a safety problem from the statewide indicators. Repeat abuse or abuse of children in foster care was at a level that was a problem, judging by the national standards. What you could then do when you went into the intensive interviewing is find out why, get some ideas about is this because workers aren't trained sufficiently to understand how to interpret information or they are too swamped to respond to it or information gets lost between the cracks.

So bringing together the statewide assessment which looks big-picture and the intensive interviews which really fill out the picture is going to give you the best picture of what is really the case.

Mr. CARDIN. I agree with that.

Ms. GOLDEN. Right.

Mr. CARDIN. The concern is whether 30 to 50 is enough to do the intense interviews, whether that is enough cases. I like the mix. I think the mix is——

Ms. GOLDEN. What we tried in our pilots essentially was to figure out whether you could do more and still have them be this intensive. And we basically concluded that you couldn't, that if you do more routinely, that is all the time, you get back to paper reviews. The reason we are saying 25 reviewers on-site for a week is that doing the intensive reviews and the stakeholder interviews, people are really doing two or three cases in that week. So I think what we have built in is that discrepancy process where if the two pieces don't fit together, we can seek additional information to try to sort it out.

Mr. CARDIN. Thank you. Thank you, Madam Chair.

Chairman JOHNSON of Connecticut. I just wanted to pursue one other question. If you could comment on the data that we are getting from NCANDS and AFCARS, are all the States reporting now and is the data going to be adequate to this new outcomes approach?

Ms. GOLDEN. Yes. I think the results of several years of investment and work and the commitment that the Committee has shown and that we in the States have had is paying off. And what we have done and the regulation is use data from those sources

and national data only in those areas where it is good enough, which is not every area, but there are a set of indicators primarily about safety and permanency where the data are good enough.

Those are indicators like the one I was mentioning, repeat abuse, or abuse of children in foster care, and then in permanency indicators about how many children move to adoption and reunification within particular periods of time, months in foster care. So what we have done is select the areas where the data are good enough to use them.

Now, I think that is essentially only for two of our seven outcomes. In the other areas, for example, are children's health needs being met while they are in foster care, there isn't national data available. So States will have to do the best they can with their State data in the statewide assessment, in the stakeholder interviews, and then we will have to look at that in-depth in the interviews.

But I do think there have been enormous strides in the last several years. I would actually note that the work of the Committee and the administration in creating the adoption incentives program which put a great deal of importance for States on the quality of the adoption data under AFCARS—that has been a significant part of improvement, as well as just all of our shared commitment.

Chairman JOHNSON of Connecticut. It wasn't very many years ago when we could not say how many kids were in foster care in America. And so when I look at your permanency outcome section and the national standards that you have established, the depth of the data is really startling. Can AFCARS really tell us and are we beginning to know statewide how many kids entered foster care in the last 12 months?

The depth of data you are looking for about how long they have been in foster care, whether it is a second time in, whether there has been abuse, all of these different issues which are terribly important for us to know—do we have the capability of collecting that data through all the 50 States?

Ms. GOLDEN. Yes. I mean, it is a wonderful accomplishment.

Chairman JOHNSON of Connecticut. It is really amazing.

Ms. GOLDEN. Just two notes. One is that in the regulation there is a chart showing the numbers that we use in order to come up with the standards. We are averaging over several years to make sure we get as many States as possible and have as good a base of information as possible.

I do want to note that, again, the strategy that I talked to you about, that we are trying to bring information together from different sources, that is important here, too, because all of the sources have weaknesses. Intensive review of individual cases doesn't reach as many cases as you would want to. Statewide numbers from these national data sources have the big advantage of comprehensiveness, but as you note, we are in the early stages of using them.

So that is why we built a strategy that brings all those pieces together and has the chance to reconcile because I do anticipate that, for example, on the percent of children adopted in less than 24 months, a State could say to us, well, even since those numbers we have made dramatic improvements, you are looking at some-

thing out of date, and so the fact that we don't meet that standard doesn't mean we are not in substantial conformity. And then we would have other information from the on-site reviews and the interviews that we could put together to come to a conclusion.

Chairman JOHNSON of Connecticut. In other words, while we do have these data systems in place in terms of looking at all 50 States, they are really very recently in place and it will take us a while to actually mature that data and be able to rely on it nationwide?

Ms. GOLDEN. Well, they are recently in place, but the ones we have selected are the ones where we think the data are good enough. We do hope that it will be possible to expand, and we have built the possibility here of expanding the use of these indicators as other portions of the data get stronger. But I really do think this is something where the Committee should take enormous credit because there is no way this was possible 5 years ago.

Chairman JOHNSON of Connecticut. It is really true. It was just simply incredible that a nation like ours with the technological sophistication, where you were seeing inventory management in grocery stores, could not tell you how many kids were in foster care.

Ms. GOLDEN. Absolutely.

Chairman JOHNSON of Connecticut. And that is why I was really impressed with the sort of dimensions of the data that you are now looking for in that area or feeling able to rely on.

Ms. GOLDEN. Absolutely.

Chairman JOHNSON of Connecticut. And we do look forward to keeping in touch with you about how the AFCARS system and the other data sets are maturing in their reliability and comprehensiveness. So thank you very much.

Ms. GOLDEN. Thank you.

Chairman JOHNSON of Connecticut. It was really a pleasure to have your testimony. We look forward to working with you and we hope that you will have someone who will be able to stay and listen to the comments of others——

Ms. GOLDEN. Yes, we will do that.

Chairman JOHNSON [continuing]. Because this is a final opportunity to have a public thought process about these. But I do want to join Ben Cardin in congratulating you, Secretary Golden, on your outstanding leadership of this process and your dedication to making bureaucracy effective and serving children.

Ms. GOLDEN. Thank you. May I introduce to you some of the people who did the actual work?

Chairman JOHNSON of Connecticut. We would like to do that.

Ms. GOLDEN. Kathy McHugh; Jerry Milner; and Joe Semidei, who is the new Associate Commissioner for the Children's Bureau.

Chairman JOHNSON of Connecticut. Well, we thank all of you very much for the time and effort you put in. It does show in your result, and you are fortunate to have such an articulate spokesman and ally.

Ms. GOLDEN. Thank you so much.

[Questions submitted by Mr. Coyne, and Ms. Golden's responses, follow:]

Mr. Coyne: Often, placing a foster home in provisional status is a good incentive for the foster parent to meet licensing requirements. Why do the new regulations require that states stop making payments to provisionally licensed foster homes?

Ms. Golden: I would like to clarify that the requirement that foster family homes be licensed prior to the placement of children is not a new requirement, rather it is an existing statutory requirement that we have now incorporated into our regulations. The Social Security Act, at section 471 (a)(10), requires States to establish and maintain standards for foster family homes, and to apply the standards to any foster family home receiving funds under titles IV-B or IV-E. At section 472 (c), the Act defines foster family homes as those foster family homes that are licensed by the State as meeting the standards established for such licensing. The Act does not provide for different levels of licensure, or less than full licensure, for foster homes, nor do we have the authority to do so through regulation. Furthermore, we do not believe that permitting Federal funds to support foster care services in homes that are not fully licensed would be consistent with the spirit of the Adoption and Safe Families Act (ASFA) which requires that the child's health and safety be paramount considerations in all decisions regarding placement and reunification. Although "provisional" licensure is, at times, a temporary precursor to full licensure, it also can become an indefinite arrangement in which children are placed in homes that have not been shown to meet safety requirements, such as criminal background clearances. Assuring that vulnerable children who have been removed from their families due to abuse and neglect are placed in foster family homes that have met full licensure standards, including requirements related to child safety, is fundamental to assuring that child safety is our primary concern.

Mr. Coyne: The new regulations require court determination of reasonable efforts by the state to prevent removal of the child from a home. This will swell the backlogs in an already overburdened court system. S. 708, The Strengthening Abuse and Neglect Courts Act of 1999 has been introduced to reduce backlogs in such courts. Can you describe how this law would help?

Ms. Golden: As you know, the courts play a critical role in ensuring the safety and permanency of children. The requirement for a judicial determination of reasonable efforts to prevent removal of a child from the home is actually not a new requirement but a longstanding and critical protection for children. This requirement, found at section 471 (a)(15)(B)(i) of the Social Security Act, as well as the requirement to make reasonable efforts to reunify children who are in foster care with their parents, was made through the Adoption Assistance and Child Welfare Act of 1980, and has been a part of Federal policy and State child welfare practice for the past twenty years. The Adoption and Safe Families Act (ASFA) amended section 471, at section 471 (a)(15)(c), to add the new requirement for States to make reasonable efforts to make and finalize a child's permanency plan. The new final rule puts into regulation both the longstanding requirements for reasonable efforts determinations, and the new requirement contained in the ASFA.

With respect to the legislation you mentioned, the Strengthening Abuse and Neglect Courts Act of 1999, my understanding is that the bill includes a number of provisions to authorize additional grant programs in both the Department of Justice and the Department of Health and Human Services to assist courts in meeting their responsibilities for overseeing cases of child abuse and neglect and foster care. For instance, one provision would authorize the Secretary of HHS to award 15–20 grants, totaling $10 million, to State and local child abuse and neglect courts to:

(1) promote the permanency goals of ASFA; and (2) enable these courts to reduce their existing backlog of pending cases, especially with regard to termination of parental rights cases.

Chairman JOHNSON of Connecticut. And now the panel, if they would all come forward, Jerry Foxhoven, President of the National Association of Foster Care Reviewers; Ramona Foley, the Administrator of Oregon Services to Children and Families; Sue Hamilton, the Director of the Legal Division of the Connecticut Department of Children and Families, who has been so helpful to me and I appreciate it; and Mark Courtney, an Assistant Professor at the School of Social Work at the University of Wisconsin, in Madison, who has been a very great help to this Committee.

Mr. Foxhoven.

STATEMENT OF JERRY R. FOXHOVEN, PRESIDENT, NATIONAL ASSOCIATION OF FOSTER CARE REVIEWERS, ATLANTA, GEORGIA

Mr. FOXHOVEN. Thank you, Madam Chair. Thank you for inviting me to testify in front of you and your Subcommittee about this important matter. And I also want to commend HHS for the rules that they have promulgated. You are probably going to hear that a lot today. I know they have done a lot of work and this is a great first step, and I think you will know from my written testimony that we consider it to be a good first step, but it is not the final step.

The three issues that I wanted specifically to talk to the Subcommittee about are, one, the independence issue. We must recognize that some of the information that HHS will get in these kinds of reviews will not be of an independent nature. Obviously, the National Association of Foster Care Reviewers is a child advocacy organization, not a trade association, but one that advocates that each child should have an independent review in his case to make sure he doesn't fall through the cracks.

While there is some input from foster care review boards, and so forth, a lot of States don't have them and most States don't have them statewide. So we want to particularly ask this Subcommittee to consider the importance of at some point having some form of independent review for every child.

We don't expect that each child be like each chicken in the country and have a Federal inspector look over their shoulder. But if we can do some kind of looking at the children from an independent basis, it will provide some kind of safeguard to each child to provide them the safety that the Federal law guarantees them.

One good example that I can give you, for instance, is that in my home State of Iowa the legislature passed a statute requiring that each caseworker meet with each child at least once every 6 months face to face. And as that was beginning to happen, they tried to move it up to once every 3 months, and in a county which is the largest county in Iowa, Polk County, the largest district in Iowa, we don't have citizen review there or independent review there.

We had it in a neighboring county, and so when we did a review of a case in a neighboring county, we asked the review members who were independently reviewing, where do you meet, is there a big enough space for the meeting? Well, they weren't. They were what the reviewers now call drive-bys, and that was that they would drive by the office by an open window and the worker would wave, see the child, and that met the need. The paperwork would never have revealed that, and even the State director didn't realize that that was county-wide. Independent review is extremely important and can provide the safety net for every one of the children.

The second concern that we had was the accountability issue. We do have some concerns about the number of cases reviewed, but we recognize again that the Federal Government can't review a broad base of cases. It would just take too much time to do a good review. The solution for that, again, is to make sure that every child has some kind of independent review, somebody looking at each child's case to make sure that they are provided the permanency that they are being promised.

The last is the accountability versus improvement issue. We do have some concerns, or at least I personally have some concerns about the length of time that States are given for the improvement. We know we want flexibility and we know we want balance, but also the Federal Government has come to parents who have had lifetimes of poor experiences, bad traits, and bad parenting skills, and told them improve those in 12 months because our kids just aren't willing to wait for you any longer.

And we commend you for saying that, but we also wonder why on the same hand we can say to States, but if you are doing the same thing for kids and aren't doing what is necessary to move them in the direction, we will give you 3 to 5 years to get there. We are not saying that immediately, again, that has to be, but we should rethink the proposition, and you should rethink the proposition of saying to States that if you are substantially out of compliance, you have a great deal of time to get back in. You can work on a plan to get back in in 3 to 5 years. We don't give parents that kind of time.

And, again, whether the failure is on behalf of the State or the failure is on behalf of the parents is pretty well irrelevant. The kids aren't getting the safety and permanency that they need, and we ask that they be granted that just as soon as possible.

Those are the three issues that we have the biggest concerns for. The rules, I think, for the most part do provide a very good step, a very good start for them. We do believe that every State with some form of independent review would do much better in every individual case, and then the HHS when they come around and do their reviews could have information that they know is accurate because it comes from an independent source that looks at every case of every child and compares data and accumulates it both for the Federal and the State to develop an improvement plan with recommendations.

If you have any questions, I would be glad to answer them.

[The prepared statement follows:]

Statement of Jerry R. Foxhoven, President, National Association of Foster Care Reviewers, Altanta, Georgia

Madam Chair and members of the Subcommittee of Human Resources, I am honored to have been asked to appear before you today to testify about the New Federal System for Monitoring and Enforcing the Implementation by States of Federal Child Protection Laws.

My name is Jerry R. Foxhoven, and I am the President of the National Association of Foster Care Reviewers. I am a volunteer, citizen reviewer, who has volunteered my time for over a decade in working with Citizen Reviewers in Iowa and on a national basis who review individual cases of children in the foster care system. The National Association of Foster Care Reviewers is an advocacy organization for children in foster care. It is an association of people and organizations who believe that quality independent review can have a tremendous, positive impact on the outcomes of children in foster care. Unlike some other national associations, we are not a trade association for review program administrators.

The final rules developed by Health and Human Services governing States and the implementation of the recent new laws in child welfare specifically including the Adoption and Safe Families Act and the Inter-Ethnic Adoption Provisions are a great first step. The rules have acknowledged the original goals of Public Law 96–272 to be safety, permanency, and child and family wellbeing. Furthermore, these rules acknowledge that these are the same goals for the Adoption and Safe Families Act of 1997. Most importantly, the rules have changed the focus of state program reviews. Rather than simply being a check for the accuracy and completeness of case

file documentation, the focus is now upon examining the results that child and family services programs achieve.

The National Association of Foster Care Reviewers will be submitting written testimony as well which will expand upon my remarks today, and deal with specific provisions of the final rules. As I have just stated, these rules are a tremendous first step because of their stress of the goals to be achieved (safety, permanency and wellbeing for children and families) as well as a shift from measuring documentation to measuring outcomes and results.

Those rules acknowledge that the flexibility that is inherent in an outcomes-based approach must be properly balanced with sufficient federal oversight and state accountability. The National Association of Foster Care Reviewers is an accountability organization. We believe that all states, in order to receive the federal funding that they do, must be willing to hold themselves accountable for producing results. These final rules take a first step in that direction.

We believe that there are several inadequacies under these final rules that require second and perhaps third steps. First, the accountability reviews included in the rules are not independent. The conductors or convenors of the review process have a vested interest in the outcome of the reviews. We believe that this is contrary to the best interest of children and to the intent of Congress. Our Association has long advocated for the importance of independence in review of children and care. We have advocated for the growth of independent review, whether administrative or citizen in nature, for all children in foster care. We have developed, through a joint project with the Children's Bureau, and with federal funds, a set of guidelines setting forth a best practices guide for independent review of children in foster care. Along with that we have developed a curriculum for training of reviewers and even a curriculum for the training of the trainers of reviewers. We believe that independent review can more effectively allow the federal government to evaluate outcomes for children.

Secondly, we believe that the rules do not provide sufficient accountability of children and resources. Under the rules, only a sampling of cases (50–150) every three to five years is performed. Health and Human Services admits that this is a costly proposition to review a substantial number of cases. Our association believes that review of virtually every case in foster care is not only necessary for the federal government to review compliance, but is also important to assure that all children are guaranteed the safety, permanency, and wellbeing promised by the federal laws.

Finally, we believe the rules fail to balance accountability with improvement. Of course, improvement is an important goal. However, the rules allow improvement to dominate over accountability. If a review shows a substantial failure to comply with the mandates of federal law, these rules may require a child to wait anywhere from one to five more years to see an improvement. The law holds parents accountable and requires them to remedy problems within twelve (12) months or risk losing their children. It is hard to understand why states should not be held accountable at the same level. Just as children should not have to wait beyond twelve months for parents to "get their act together" the same children should not have to wait any longer for states to "get their act together".

A good second step to overcome these inadequacies would be to clarify the requirements for existing foster care review programs. Good independent foster care review programs have a two-tiered structure. A state governing board, which is independent and conducts oversight of the entire review program, collects and disseminates data which was independently gathered and makes recommendations for changes. The second tier is the mechanism to review the individual cases of children in foster care (whether administrative, citizen, or a combination). The second tier allows individual review of all children in foster care.

On behalf of all the children in out of home placement in the United States, we commend you and the Department of Health and Human Services for this important first step in achieving safety, permanency and wellbeing for children. We also encourage you to consider taking the second and subsequent steps necessary to provide the independence necessary to assure compliance, accountability, and success in outcomes.

Thank you again or the opportunity for the National Association of Foster Care Reviewers to provide input to you on the Rules for Monitoring and Enforcing the Implementation by States of the Federal Child Protection Laws.

Chairman JOHNSON of Connecticut. Thank you very much.
Ms. Foley.

STATEMENT OF RAMONA L. FOLEY, ADMINISTRATOR, DEPARTMENT OF HUMAN SERVICES, STATE OFFICE FOR SERVICES TO CHILDREN AND FAMILIES, SALEM, OREGON

Ms. FOLEY. Thank you. I appreciate the opportunity of being invited here today to talk about the process. I am currently Administrator for Child Welfare Services for the State of Oregon. I have been there since August. Prior to that, I worked in South Carolina, where I was Child Welfare Director for the past 5 years, and South Carolina was one of the pilot States.

My confidence in this new system of review led us to volunteer to be a State to go through this process this year, starting in Oregon hopefully next month. I am glad to hear what Assistant Secretary Golden said today about looking also at States who weren't high performers in this first round. That was going to be one of my recommendations, and the good thing about volunteering is my peers will not know if we are going first because we volunteered or because we have poor outcomes.

The strengths of the new system that I would highlight—the focus on outcomes, I think, is excellent. Having been a survivor of the old 427 reviews, we all know what it was like to count how many times something happened. I commend HHS for adding the ASFA, the Adoption and Safe Families Act, performance reports as the major component. To not do that I think would have been a real shame not to take advantage of that.

I commend HHS for the recognition that some safeguards cannot wait for a 2-year corrective action plan. I am one of the child welfare folks that feels strongest about that. If you have a State that is not performing in terms of safety, if you have a State that is not providing due process in terms of cases going to court, that cannot wait 2 years. That has to have a quicker corrective action plan, and I think the revisions in the regulations allow for that.

I also like the idea of permission of the Secretary to extend to year three, that you can't just not take seriously what your corrective action plan or your program improvement plan is going to be. You must get the Secretary's permission to extend that even in the best of circumstances beyond the 2 years.

Some of the challenges I see that we are still going to be faced with here. The priority is now being given to the Adoption and Safe Families Act performance reports. These reports are coming out to our Governors and to our child welfare directors. The child welfare agencies saw the previews of these in September, and in Oregon, for example, we went ahead and started trying replicating this process for each of our 39 branches. So we will already have some sense of what kinds of corrective action or program improvements we need branch by branch in our State.

A second challenge, I think, will be, as we have talked about earlier, the 30 to 50 cases to be reviewed. We will be looking now at potentially a universe of a State's cases in foster care, child protection and adoption, and trying to somehow relate the universe to what in Oregon would be ½ of one percent of our cases read, if we read only 50 cases.

I agree with what was found in the pilots that there has been little discrepancy between statewide data and the findings from the small sample. I don't have a solution to that. It is awful to criticize

something and not have the solution. I don't know what the solution is, but I do think 50 cases being read may not alter tremendously what you are already finding by the time you look at the performance measures and the statewide assessment for a State. High performers may still be high performers; low performers probably still need a lot of help quickly.

How substantial compliance will be determined is along that same line. I think that is going to be a challenge. We have heard some of that discussed here today. I think that I am pleased to hear Olivia Golden say that there will be an effort to look first at how States are performing before they decide conclusively where they will go for the early review process in this country.

The resources are an issue. I was also pleased to hear the testimony that there is a serious look at what the resource issue will be for the Federal officials. As a State, we will be investing a lot of resources in this process and we would like to make sure that our Federal partners are there with us and are going to be accessible as we go through a process that is fairly extensive. I think the training of our Federal officials who come on-site will be critical, and what the resource centers have to offer.

Again, I commend HHS for the last 5 years of effort. I think it is never easy to put in place a system that pleases everyone, and certainly this probably will not please everyone, but I think it is certainly an advancement for States. And we are anxious to work with HHS in regard to the three things that I think have happened over the past 4 years at the same time, that being the data we now have from AFCARS and NCANDS, how to blend that into this process; the ASFA and its performance reports that we are now going to be receiving on a yearly basis.

And then, third, as part of reform some States have developed extensive quality assurance systems, and I think we can take advantage of that. Some of those systems currently are mandated by State law; some require extensive interviews with stakeholders. And I think when the statewide assessment is done in each State, there is an opportunity there to take advantage of that. So we look forward to going through the review process and seeing how these things complement each other, as opposed to contradict each other.

Thank you very much.

[The prepared statement follows:]

Statement of Ramona L. Foley, Administrator, Department of Human Services, State Office for Services to Children and Families, Salem, Oregon

Madam Chairman and Members of the Subcommittee on Human Resources of the Committee on Ways and Means.

My name is Ramona Foley and I appreciate the invitation to appear before you and to offer testimony on the new federal child protection review system. I appear on behalf of the Oregon Department of Human Services where I serve as the Administrator of the State Office for Services to Children and Families. I have been in my current position since August, 1999; however, I have more than thirty years of experience in public social services. For the five years prior to my appointment in Oregon, I was the Director of Family Preservation and Child Welfare Services for the South Carolina Department of Social Services. My knowledge of the new federal review process dates back to 1996 when South Carolina volunteered to serve as one of the pilot sites for the review. Subsequently, I have had the opportunity to participate in many discussions of the review process, such discussions having been made possible by Health and Human Services (HHS) and by the American Public Human Services Association (APHSA). And while I am not representing APHSA or its affiliate, the National Association of Public Child Welfare Administrators (NAPCWA), I

should mention that I am the President-elect of NAPCWA and, therefore, enjoy the opportunity of an ongoing dialogue with my colleagues around the country.

Finally, in the way of introduction, I consider myself an advocate for children and their families and am a strong proponent of accountability in terms of improved outcomes within our programs and in terms of expenditures of the federal and state dollars for which we are responsible.

In regards to the final regulations, I want to commend HHS for continuing in its efforts to emphasize outcomes over process, to emphasize the desire for program improvement over immediate sanctions, and for its recognition that program improvement does not happen overnight, but in fact, takes time and commitment on the part of the public child and family services system, as well as all the other key stakeholders within a state. These are undergirding principles, which I believe are critical in balancing the desire for improved outcomes with the desire for improved fiscal accountability.

The requirement for a statewide assessment is a good example of the improvements over the previous process-driven 427 reviews. While states can perform such assessments without a mandate, it is often difficult to justify the time and effort it takes to engage in such a comprehensive effort. When we piloted the proposed HHS review process in South Carolina, we found that this part of the review was the most beneficial in terms of our staff and of our stakeholders identifying the strengths and the challenges within the state's system. In fact, my confidence in this comprehensive approach has led my state to agree to be the first state in Region X to undergo the new child and family services review. The review is scheduled to begin next month and as a new state administrator, I especially welcome the opportunity to assess how we are doing as a state in providing safety and permanency for our children.

In addition to the statewide assessment, there are two revisions, which are described in the final regulations and on which I wanted to commend HHS. The first of these revisions is its effort to make the new Adoption and Safe Families Act (ASFA) state performance reports a key component of the statewide assessment. The child welfare outcomes and measures used in the performance reports were developed in a different context than that of the review process, but as many commenters pointed out, it is essential that a state focus on a set of outcomes and that the outcomes not contradict each other. While the outcomes associated with ASFA and those articulated in the review process are not identical, they are compatible within the broader goals of safety, permanency and well-being.

Another revision in the final regulations, which I believe is an improvement to the draft regulations, relates to the duration of program improvement plans. The new language which requires a state's improvement in less than two years "when there are particularly egregious areas of nonconformity impacting child safety" raises the level of a state's accountability to a higher standard and thus is consistent with our desire to have safety for all children known to public child welfare systems. To this end, I also support the additional requirement that the Secretary must approve any one-year extension that is requested beyond the two years allowed for program improvement. I believe that by elevating such a request to the Secretary's level, there is a strong and clear message to state officials that successful compliance with program improvement plans is a top priority and must be treated as such. And, the message is further enhanced by new language in which penalties begin if a state fails to participate in program improvement plans or fails to show improvement in the plan that has been implemented.

Having mentioned several of the most significant improvements made in the final regulations, I want to now focus on those areas which I think will continue to pose the greatest challenges in the new review process. The first challenge is giving priority to the new performance reports to the states' governors and agency heads. While I welcome the compatibility of these reports with the review outcomes, I believe states will be responsive to this initial set of performance reports and will move immediately to make needed program improvements. They will not want to wait for technical assistance from HHS pending the completion of the full child and family service review. In fact, last September states began the review of the preliminary data for the upcoming performance reports. In Oregon, for example, we are replicating the statewide performance reports in a way that will yield individual branch reports for each of our 39 branches. We will then be able to set priorities and implement action plans that address not only a specific outcome, but which also address the priority that the outcome might have for a specific local branch and its local community. And while this process will no doubt enhance our upcoming federal review, in some ways it will mean that our potential need for technical assistance cannot be delayed until the completion of our federal review in 2001.

A second challenge we continue to face in the final regulations is the case review process required in the on-site review. As the case readings and interviews are still limited to 30–50 cases (or a maximum of 150), I remain concerned that the findings represent anecdotal information in the best of circumstances and a distorted view of a state's casework practice in the worst of circumstances. With the advent of improved data from the National Child Abuse and Neglect Data System (NCANDS) and the Adoption and Foster Care Analysis and Reporting System (AFCARS) and with the performance outcomes generated by ASFA, the 30–50 case review would seem to be even less informative than it was in the pilot review in 1996. In fact, among the pilots, it was noted by HHS that there was "little discrepancy between the statewide data and the findings from the small sample." So, I am left with the question as to the value of the small sample given the past four years of improvements in our statewide data systems. Some argument could be made that the quality of service delivery can only be assessed by reviewing case files and interviewing stakeholders. But many states have now developed their own extensive quality assurance systems, some of which provide annual, statistically valid case reviews for each of their local offices or others which incorporate extensive interviews with community stakeholders and yield recommendations for statewide system improvements.

Related to the case records review, but a different challenge, is that of the criteria for determining substantial compliance. I believe it will be difficult to reconcile the performance report indicators for substantial compliance with the indicators for substantial compliance based on the on-site case reviews. To some extent, this will be comparing the universe of the child welfare services population at a 75% benchmark with a statistically insignificant review of cases at the 90–95% benchmark. For a state like Oregon, this is the comparison of how well we are meeting our federal performance outcomes for all of our child welfare cases to how well we are meeting a similar, though not identical, set of outcomes for ½ of 1% of our child welfare cases. (The ½ of 1% is the result of comparing 10,000 open cases to 50 cases to be read in the sample.) And this comparison is further complicated as we move to the third tier of the child and family service review, that of determining from individual stakeholders how well we are complying with the processes of the seven systemic factors. While each of these levels of review may yield valuable information, it is also likely that for high performance systems, these tiers of reviews will continue to indicate substantial compliance; and that for those systems which are struggling to meet substantial compliance in their state's performance measures, the successive tiers of review will likewise validate their failure to substantially comply.

Still another challenge that warrants mentioning, but for which there is not an obvious solution, is the issue of resources. As planned by HHS, all states should have an initial review within the next four years. Assuming that even one third of the states will need aggressive program improvement plans, one must ponder where the Federal resources will come from for the on-site reviews and for the technical assistance that states may request to successfully complete their plans. As a state official, I could take the position that this is not my problem, but rather is one that belongs to the Administration on Children and Families (ACF). However, as a state preparing to go into the new review process, Oregon will be investing significant time and energy in order to produce a thorough and high quality statewide assessment. Therefore, we have a vested interest in knowing that our federal partners will be accessible to us throughout this review and that the federal team members who will be a part of our joint team will be individuals whose knowledge, experience and training related to child and family services will be evident to our own staff as well as to our community partners. I respect ACF's position that the qualifications of the federal reviewers "is an important matter for internal ACF consideration." However, it must be included as a challenge in that ACF's ability to have its staff travel to national meetings or to participate in regional training events has been greatly curtailed in the past due to budget restraints. The result of this is that federal team members who have not had the advantage of staying current with the field will struggle if called upon to address complex issues such as those related to child safety. (For example, one of the issues to be addressed in the on-site reviews relates to the nature of reports of maltreatment. Given the variation in state laws in terms of reporting, this measurement of child safety could pose difficulty for any reviewer who is not familiar with the state's statutes and accompanying policies and their application to practice.)

I should also point out that some of the challenges I have described may in fact be clarified in the forthcoming HHS CFSR procedures manual. The details of the exact review procedures and efforts towards "objective" review are subjects of this manual and so I, along with my colleagues in other states who will be initiating

the review process next month, look forward to reviewing the manual and the review instruments that will be used in the on-site review.

When HHS conveys in the rule the "sense of urgency about the need to implement needed improvements," I find this sense of urgency to be totally consistent with the direction in which the states themselves wish to proceed and that Congress has given us with ASFA. And if the states' performance reports yield outcomes which indicate that this "sense of urgency" appears to be greater for some states than for others, I would encourage HHS to not only consider this, but to exercise flexibility to adjust its own schedule of states to be reviewed this year in order to ensure that the states with the greatest need for help are indeed the ones to which the most attention can be directed first. After all, if the safety and permanency of children are values to which we all adhere, none of us would want to deprive a sister state of having access to resources in year one rather than having to wait for year four.

I want to acknowledge the enormous effort that HHS has exerted to provide the states with a review system that is years ahead of the old 427 audits. I find it helpful, too, to keep in mind that while HHS has spent the past several years developing a system that can both inform the states and the public, the reality is that other positive things have evolved as well: our NCANDS and AFCARS data are providing us with a wealth of information, far beyond what most of us thought would be possible in child welfare ten years ago; ASFA and its focus on outcomes and dissemination of performance reports will inform us and will shape our program improvement plans in an unprecedented way; and our own state quality assurance systems continue to bring our community partners to the table and thus open up our child and family services systems to the public's scrutiny and input.

To take advantage of these three current opportunities, I hope that HHS will continue in its efforts to gain information from the review process and to be willing to make adjustments as we all collectively find better ways of ensuring quality in our child and family service systems. It is certainly too soon to judge the new review process, but I commend HHS for partnering with the states in this critical endeavor.

THANK YOU.

Chairman JOHNSON of Connecticut. Thank you.

Ms. Hamilton.

STATEMENT OF SUSAN HAMILTON, DIRECTOR, LEGAL DIVISION, CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES, HARTFORD, CONNECTICUT

Ms. HAMILTON. Good morning, Madam Chairman, Representative Cardin. My name is Susan Hamilton and I am Director of the Legal Division at the Connecticut Department of Children and Families. I am here today on behalf of Commissioner Kristine Ragaglia and I would like to start by thanking you for giving us an opportunity to come today to comment on this topic. And I would also like to extend some sincere appreciation from the State of Connecticut and Commissioner Ragaglia personally for your commitment toward children's issues and dedication toward this topic.

As you may be aware, Connecticut was one of the pilot States that participated in the early review process back in 1996. That gave us an opportunity to join with ACF in reviewing our child welfare system. The review process at that time actually incorporated many of the components that are now part of the final review that is outlined in the regulations. Again, the focus at that time was on safety, permanency, and the child and family well-being outcomes.

The review did, in fact, provide us with a quantitative and a qualitative assessment of our statewide child welfare system and was effectively able to identify not only areas in which we were achieving the desired outcomes, but also areas in which we needed to work on some improvements. And I think it is important to note

that as a result of that review, we did, in fact, make some significant program and practice changes that helped to promote those outcomes and objectives.

For example, in the area of our administrative case reviews, we decided to incorporate many of the measures and outcomes that were included in the on-site case review instrument into our case review process, and that has proved to be an effective way of measuring on a case-by-case basis success at achieving those outcomes.

I think overall the feedback from the review that was done during the pilot was positive. I think there is clear support in Connecticut for focusing on results and outcomes, as opposed to the prior process of utilizing more of a checklist and more of a focus on compliance with mere procedural requirements.

I think we certainly appreciated the opportunity at that time, and now certainly in connection with the new regulations, to work in partnership with ACF and doing a team approach to the review process, and we applauded at that time, and in the reviews that will be forth coming, the involvement of all the stakeholders in interviews and case reviews, and the combination of looking at those issues as well as compliance with the statewide data indicators.

I would like to talk briefly on some of the key components of the review process. I did discuss at length in my written testimony some of the comments Connecticut has with regard to the outcomes and the criteria that will be measured. I think that the process will, again, facilitate a more accurate determination of substantial conformity. We certainly support the use of the two phases in the process, the statewide assessment as well as the on-site review.

I would also applaud HHS and the decision to incorporate the ASFA outcome measures into the outcome measures that will be used as part of the national standards. In Connecticut, as you may know, we have developed a rather comprehensive strategic planning process, and in our efforts to try to standardize what we are looking at on a statewide basis, it is certainly helpful to us that some of the Federal requirements are being standardized as well.

In connection with the on-site review process, again I think one of the strengths that we wanted to commend HHS for including is the comprehensive component of looking at the information from families, children, community providers, foster parents, and key stakeholders in the process as part of the review of substantial conformity.

I do share, and Connecticut does share, some of the concerns that were raised earlier with respect to the percentage of cases that need to be found in compliance in order to achieve that level of substantial conformity, although I can appreciate the importance of having a high standard. And I think that it makes some sense to have that high standard, given that there is a discrepancy resolution process in place in the regulations and that there is an opportunity for States to develop program improvement plans before financial penalties are imposed.

In terms of the program improvement plans, I think I share Ramona Foley's concerns with respect to the timeframes. I think it is important that the regulations do clarify that when there are egregious areas of non-conformity that specifically relate to child safety

that those must be remedied in under the 2-year timeframe, and that we do need to keep in mind the complexity and the seriousness of the remedies that will be required to address each area of non-conformity in identifying the length of time that should be permissible to effectuate the plan.

One of the concerns that I think DCF may share with some of the other States who are operating under consent decrees is the possibility for conflict between the consent decree mandates and the program improvement plans.

I understand that the regulations do not require us to include consent decree mandates into the program improvement plans, but I think it might be helpful to allow States to include the relevant consent decree mandates into the program improvement plans and then allow those program improvement plans to supersede the individual requirements of the consent decrees. That may require additional statutory and regulatory changes which the State of Connecticut would certainly support.

In closing, on behalf of Commissioner Ragaglia, again I would like to express our thanks for giving us this opportunity to come today. I hope the comments are helpful, and I do believe overall that the regulations will provide a more effective way of measuring States' compliance with the Federal requirements and will ultimately result in improved services and outcomes for children and families.

Thank you.

[The prepared statement follows:]

Statement of Susan Hamilton, Director, Legal Division, Connecticut Department of Children and Families, Hartford, Connecticut

Good morning Representative Johnson, Representative English, Representative Cardin and members of the Subcommittee on Human Resources. My name is Susan Hamilton, and I am Director of the Legal Division at the Connecticut Department of Children and Families (DCF). I am here today on behalf of Kristine D. Ragaglia, Esq., Commissioner of DCF, to comment on the final regulations published in the *Federal Register* on January 25, 2000 pertaining to the new integrated child protection review system for monitoring and enforcing States' implementation of federal child welfare laws.

As you may be aware, Connecticut participated in a pilot of this new child welfare review process in 1996 which allowed the Administration for Children and Families (ACF) to join with the State in assessing the State's child welfare system. The review included many of the components of the final child and family services reviews outlined in the new regulations and focused on the outcomes of safety, permanency and child and family well-being. This review process provided both a qualitative and quantitative assessment of our child welfare system and identified areas where the State was achieving the desired outcomes as well as areas in need of improvement.

Based on the results of this review, DCF was able to develop and implement both policy and practice changes that promoted the above goals of safety, permanency and child and family well-being. For example, DCF examined and improved the quality of its administrative case review (ACR) process and incorporated some of the measurements and outcomes from the on-site case review instrument into the ACR process. In addition, DCF increased and improved the training provided to field staff, supervisors and managers in areas including, but not limited to, risk assessment, comprehensive family assessments, child welfare supervision, and documentation. DCF also developed and implemented a marketing campaign designed to increase the number of available licensed foster homes.

The overall feedback received following the pilot review was favorable, and there is clear support in Connecticut for focusing on results and outcomes during the review process as opposed to mere compliance with procedural requirements. In addition, DCF appreciated the opportunity to work in partnership with ACF during the review process and applauded the involvement of all stakeholders, including parents, children and community providers, in the review process.

I would now like to comment specifically on some of the key components of the new child and family services reviews:

TIMETABLE FOR REVIEWS

(SEC. 1355.32)

As specified in Sec. 1355.32(a), a complete initial review must be conducted within 4 years after the regulation becomes effective (3/27/00). This should give States adequate time to become familiar with the new review process. In addition, the remaining timetables identified with respect to States which are found to be operating in substantial conformity, as well as those States found not to be operating in substantial conformity, seem appropriate and should ensure that there is adequate review of each State's child welfare system.

OUTCOMES AND CRITERIA/PROCEDURES FOR REVIEWS

(SEC. 1355.33)

As noted above, DCF supports the partnership between State and Federal reviewers who comprise the review teams as well as the comprehensive, outcome-focused nature of the reviews as outlined in the new regulations. More specifically, the three outcomes for children and families that have been established as indicators of States' conformity with federal law (i.e. child safety, permanency for children, and child and family well-being) are consistent with what should be measured in evaluating the performance of a State's child welfare system. In addition, the seven specific criteria outlined in the regulation that will be used to measure States' performance with regard to these outcomes focus appropriately on protecting children from abuse and neglect, maintaining children in their own homes whenever possible, providing children with timely permanency, preserving the continuity of family relationships and connections for children when appropriate, and providing appropriate services to children and families.

Along with the outcomes for children and families that will be used as indicators of States' conformity with federal law, the new review system also appropriately requires an assessment of each State's capacity to deliver services leading to improved outcomes for children and families. The seven systemic factors reviewed include: statewide information system on children in foster care, case review system for all children in foster care, standards to protect the health and safety of children in foster care and an identifiable quality assurance system, staff development and training program, service array for children and families, agency responsiveness to the community, and foster and adoptive parent licensing, recruitment, and retention. Review of these systemic factors along with the outcomes for children and families should facilitate more accurate determinations of substantial conformity.

The two-phase review process established by the regulation seems to provide a comprehensive approach for evaluating States' performance. The first phase of this process, the statewide assessment, is appropriately conducted by internal and external State team members and requires the State to address both the systemic factors outlined above as well as its performance in meeting the national standards in the outcome areas of safety, permanency and child and family well-being using data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS).

Although the national standards by which States will be measured during the statewide assessment are not specified in the regulations, the preamble of the regulations explains that standards have been developed for the outcome areas of child safety and permanency using currently available data. The national standards related to the child safety outcome appropriately include the: (1) percent of children with substantiated abuse or neglect reports for whom a subsequent abuse or neglect report is substantiated; and (2) the percentage of foster children who are the subject of substantiated abuse or neglect by a foster parent or facility staff.

The national standards related to the child permanency outcome include the: (1) percent of children who entered foster care during a review period who re-entered within 12 months of a prior foster care episode; (2) percent of children reunified with their parents within 12 months after their latest removal from home; (3) the percent of foster children adopted in less than 24 months after their latest removal from home; and (4) the percent of children in foster care less than 12 months who had no more than two placement settings; and (5) the median length of stay in foster care for children entering foster care for the first time.

These national standards have been established at the 75th percentile of all States' performance on the particular outcome, as measured through AFCARS and NCANDS, and are appropriately based on the outcome measures developed in ac-

cordance with Section 203 of the Adoption and Safe Families Act (ASFA). Internally, DCF has developed a comprehensive strategic plan to promote the goals of safety and permanency for children which incorporates the ASFA outcome measures. Given the importance of standardizing the measurements we are using to assess performance at a statewide level, DCF supports the decision to make the ASFA measures consistent with the statewide data indicators used in the child and family services reviews.

While there may be some concerns with the present reliability and accuracy of the AFCARS and NCANDS data, the quality of these data sources seems to be improving as a result of the penalties imposed for non-compliance with AFCARS submission requirements, the opportunity for States' self-analysis prior to submission and the financial incentives for improving AFCARS data. In addition, as noted in the preamble to the regulations, AFCARS is an appropriate data source to use in Federal reviews as it is the statutorily-mandated information collection system for Federal child welfare programs.

The statewide assessment phase of the review must also include an assessment of the characteristics of the agency that have the most significant impact on its capacity to deliver services to children and families and an assessment of the strengths and areas in need of improvement related to the State's child and family services programs. Based on the quantitative and qualitative outcome of the statewide assessment, the State and the ACF regional office will jointly decide the location of the on-site reviews and the types of cases that will be reviewed. Again, this provides an effective, collaborative process for identifying the structure for the second phase of the review process.

The second phase of the review process, which consists of an on-site review with a joint Federal/State team, properly relies on information from the statewide assessment to determine areas in need of improvement or further review. As the regulations set forth, the State's largest metropolitan area must be included in the locations selected for the on-site review. While urban areas may include a higher percentage of families and children who are involved with the child welfare system, it is important to include these areas in order for the review to accurately represent statewide issues.

The sources of information collected during the on-site review, which include case records, interviews with children and families, interviews with caseworkers, foster parents, service providers, and key stakeholders both internal and external to the agency, will likely provide a more comprehensive and accurate assessment of whether or not the state is in substantial conformity with federal law using both qualitative and quantitative performance indicators. The new review system also seems to have adequately identified an effective way of resolving discrepancies between the statewide assessment and the findings of the on-site review by allowing the State to submit additional data or jointly review additional cases with ACF. As noted in the preamble of the regulations, this approach permits on-site exploration of why performance related to the statewide data indicators might not be an accurate indicator of statewide performance.

SUBSTANTIAL CONFORMITY

(SEC. 1355.34)

As outlined in the regulations, a State will be considered in substantial conformity with regard to the three child and family outcomes (and the seven associated criteria) discussed earlier if the State's performance has met the national standard(s) associated with the outcome, if applicable, and if each outcome is "substantially achieved" in 95% of the cases examined during the on-site review (90% of the cases in an initial review). The determination of whether an outcome has been "substantially achieved" is appropriately based on information from various sources including case records and interviews. In addition to the above measures, a State's level of achievement related to the child and family outcomes is properly measured by the extent to which it has implemented certain identified statutory and regulatory requirements which relate, in part, to service provision, family preservation, permanency planning, recruitment of foster and adoptive parents, effective use of cross-jurisdictional placement resources, and reasonable efforts.

While the percentage of cases identified above seems high, this standard is undoubtedly necessary in order promote the objectives of the child and family services reviews. In addition, a high threshold makes sense in this new review system which allows the States to implement a corrective action plan before financial penalties are imposed if they are found not to be in substantial conformity.

In addition to the criteria related to outcomes, States must meet certain criteria related to service delivery in order to be considered in substantial conformity with

federal child welfare laws. In connection with the capacity to deliver services leading to improved outcomes (i.e. the seven systemic factors discussed above), a State will be considered in substantial conformity if all State plan requirements associated with that systemic factor are in place and no more than one of the State plan requirements fails to functions. This determination appropriately includes a process by which the Federal/State team rates the State's conformity with State plan requirements based on information from the statewide assessment as well as the on-site review and stakeholder interviews. Information from both phases of the review process must support the determination of substantial conformity.

It appears that the process for determining substantial conformity for the systemic factors does include specific criteria that must be rated numerically to ensure objectivity and consistency among reviewers and across States in assessing outcome achievement. However, as recognized in the preamble, it is equally important to allow for professional judgment in determining performance with respect to the service delivery criteria.

PROGRAM IMPROVEMENT PLANS

(SEC. 1355.35)

As mentioned earlier, the new child and family services review process requires States to remedy areas of nonconformity by developing a program improvement plan (PIP). This allows States an opportunity to improve programs and services before financial penalties can be imposed. The PIP, which is developed jointly by State and Federal staff in consultation with the review team, must appropriately include goals, action steps, completion dates, benchmarks for measuring improvement, and any need for technical assistance to implement the PIP. A State must submit its PIP within 90 days from receipt of the letter from ACF informing the State that it is not in substantial conformity. This seems to be an adequate amount of time to submit the PIP to ACF for approval. If ACF does not approve the PIP, the State is given an additional 30 days to revise the plan which is reasonable assuming that ACF provides the State with clear guidelines and recommendations regarding what aspects of the PIP are in need of revision.

States must report quarterly to the Department of Health and Human Services (HHS) on their progress towards implementing their PIP and have a specified time in which to complete their PIP. The time allotted cannot exceed 2 years, except that HHS may grant a 1-year extension in rare circumstances. It is important that, as the regulations require, the established duration of the plan be based upon the seriousness and complexity of the remedies required to correct the area of nonconformity. In addition, DCF supports the requirement that egregious areas of nonconformity impacting child safety be satisfactorily addressed in less than two years.

In regards to the amount of financial penalties imposed, and the graduated penalties for continuous nonconformity, the regulations seem to adequately promote program and practice improvements, as well as accountability, without impeding the States' ability to make the necessary improvements by imposing immediate penalties. In addition, it seems effective to vary the amount of federal funds withheld depending on the extent of the State's nonconformity and to calculate the penalties as a percentage of certain pools of federal funds.

One of the concerns that DCF shares with other State agencies that are operating under consent decrees is the possible conflict that might arise between PIPs and consent decree mandates. While we understand that States are not required to include the provisions of consent decrees into PIPs, it would be helpful to permit States to include relevant consent decree mandates into their PIPs to address areas of nonconformity and then allow the PIP to supercede the individual requirements of the consent decree. This could be clarified in the child and family services reviews procedures manual referenced in the preamble but might also require other statutory and/or regulatory changes.

In closing, on behalf of Commissioner Ragaglia, I would like to thank you for the opportunity to speak with you today on this important topic, and I hope my comments have been helpful. Overall, I believe the regulations, along with the other documents and review instruments that will be used during the review process, will provide a more effective system for reviewing States' compliance with federal requirements and will result in improved services and outcomes for children and families.

Thank you.

Chairman JOHNSON of Connecticut. Thank you very much.
Mr. Courtney.

STATEMENT OF MARK E. COURTNEY, ASSISTANT PROFESSOR, SCHOOL OF SOCIAL WORK, UNIVERSITY OF WISCONSIN-MADISON

Mr. COURTNEY. Good morning. Thanks for the opportunity to comment on these regulations. I would like to make three general observations today about the new review system.

First, whatever its limitations, I believe that the new system is a vast improvement over what we had before. For the first time in Federal regulation, Title IV-B and IV-E, will be overseen in terms of outcomes as opposed to paper compliance with administrative procedures, which is a great improvement.

The review system appropriately builds on Federal efforts to support management information systems by using data from those systems, and as the capability of these systems improves, so will our knowledge of outcomes for children and families. And the collaborative Federal-State review process and mechanisms for allowing timely corrective action, supported by Federal technical assistance, are also significant improvements over the previous approach.

Second, I believe that the limitations of the new system and potential pitfalls result not so much from the design of the reviews, per se, or from the benchmarks, per se, but from our poor understanding of how child welfare programs function.

Child welfare management information systems are only beginning to shed light on the kinds of safety and permanency outcomes that the benchmarks capture. Moreover, these measures vary considerably both between and within States. For example, the median time to discharge, one of the measures, for children first entering foster care in Iowa is 3 months, in Maryland 13 months, and in Illinois 41 months.

Similarly, the rate of reentry to foster care varied among States in the Multistate Foster Care Archive from 18 percent in California to over 26 percent in Wisconsin. Within Wisconsin, substantiation rates for child neglect vary from less than 10 percent in some counties to over 60 percent in others.

Unfortunately, while we know that these safety and permanency indicators vary between and within States, we know very little about why they vary. Without knowing why one State differs from another on any given outcome, we run the risk of creating unintended consequences and imposing Federal financial sanctions on States that don't meet national standards.

For example, one of the national standards pertains to the percentage of children entering foster care who are, in fact, reentering care within 1 year of a previous foster care episode. This makes some sense, since we want to keep foster care reentry down. Nevertheless, the measure is biased in favor of States with increasing foster care entries, since children who reenter care after exiting in a previous year will be counted against a growing number of entries. In contrast, the measure is biased against States with declin-

ing entry rates, a consequence that no one would argue is sound policy.

Median length of stay until discharge for children entering care is also a problematic benchmark in some cases. States where older children and youth make up the bulk of foster care entries, for example, my home State of Wisconsin, may generally fare better under this measure than States with younger entry cohorts simply because older children's length of stay is cut short when they age out of care.

The bottom line is that interstate variation in the proposed benchmarks can be due to a variety of explanations, only one of which is that States with better outcomes are actually providing superior services. In short, the poor knowledge base regarding child welfare populations and programs calls for considerable caution in routinely applying one-size-fits-all outcome benchmarks tied to Federal funding.

Until our knowledge base is vastly improved, Federal reviewers will be wise to carefully explore alternative explanations for interstate variation in outcomes before lowering the fiscal boom. The new review system must be implemented in the context of much greater commitment to understanding the operation of public child welfare programs.

Third, I believe that the Department of Health and Human Services should move as quickly as possible to identify and pilot-test at the State level indicators of child and family well-being. Child safety and permanence are central to child welfare practice and policy, but the well-being of children and families is central to many current child welfare policy debates.

For some measures of well-being, we will need new data to do this. But in other cases, the data already exist and are simply not being put to proper use. For example, Medicaid claims data can and should be used to examine whether children being placed in foster care are given required health and mental health assessments in a timely manner. Children who enter the child welfare system cannot afford to wait another 10 years for the managers of the system to begin to seriously assess child well-being.

In summary, I believe that the new child welfare review system is a vast improvement over the old system and should be applauded. Nevertheless, our lack of knowledge about child welfare services and populations and the absence of systematic measures of child well-being in the review system will limit the meaningfulness of review findings for some time to come.

[The prepared statement follows:]

Statement of Mark E. Courtney, Assistant Professor, School of Social Work, University of Wisconsin-Madison

Too-frequent news stories documenting the horrors associated with failures of our nation's child protection system attest to the need for federal oversight and support for child welfare services. The new federal child protection review system is long overdue. I would like to make three general observations today about the new review mechanism.

First, whatever its limitations, I believe that the review system is a major step in the right direction. For the first time in federal regulation of Title IV-B and IV-E there will be a greater focus on outcomes for children than on paper compliance with administrative processes. The review system appropriately builds on federal efforts to support child welfare management information systems by relying on AFCARS and NCANDS data to measure progress. As the capabilities of these sys-

tems are enhanced over time so will the capacity to assess child and family outcomes. The collaborative federal-state review process and mechanisms for allowing timely corrective action, supported by federal technical assistance, are significant improvements over the previous approach.

Second, I believe that the limitations and potential pitfalls of the new review system result not so much from the design of the reviews or the benchmarks per se, but from our poor understanding of how child welfare programs function. Child welfare management information systems are only beginning to shed light on the kinds of child safety and permanency outcomes that the benchmarks capture. Moreover, these measures vary considerably both between and within states. For example, data from the Multistate Foster Care Data Archive indicate that between 1988 and 1997 the median time to discharge for children first entering foster care in Iowa was three months, in Maryland 13 months, and in Illinois 41 months. Similarly, the rate of reentry to foster care varied among the ten Archive states from 18 percent in California to over 26 percent in Wisconsin. Within Wisconsin, the substantiation rate for reported child neglect varies from less than 10 percent to nearly 60 percent between counties. Unfortunately, while we know that these safety and permanency indicators vary between and within states, we know very little about why they vary. Without knowing why one state differs from another on any given outcome, we run the risk of creating unintended consequences in imposing financial sanctions on states who do not meet national standards.

For example, one of the national standards pertains to the percentage of children entering foster care who are in fact reentering care within one year of a previous foster care episode. This makes some intuitive sense since we want to minimize reentry to foster care. Nevertheless, the measure is biased in favor of states with increasing foster care entries since children who reenter care after exiting in the previous year will be counted against a growing number of entries. In contrast, the measure is biased against states with declining entry rates, a consequence that no one would argue is sound policy. Median length of stay until discharge for children entering foster care is also a problematic benchmark. States where older children and youth make up the bulk of foster care entries may generally fare better under this measure than states with younger entry cohorts simply because older children's length of stay is cut short when they "age out" of care. The bottom line is that interstate variation in the proposed benchmarks can be due to a variety of explanations, only one of which is that the states with "better" outcomes are actually providing superior services.

In short, the poor knowledge base regarding child welfare populations and programs calls for considerable caution in routinely applying one-size-fits-all outcome benchmarks tied to federal funding. Until our knowledge base is vastly improved, federal reviewers will be wise to carefully explore alternative explanations for interstate variation in outcomes before lowering the fiscal boom. The new review system must be implemented in the context of a much greater commitment to understanding the operation of public child welfare programs.

Third, I believe that the Department of Health and Human Services should move as quickly as possible to identify and pilot test at the state level indicators of child and family well-being. Child safety and permanence are central to child welfare practice and policy, but the well-being of children and families is at the heart of many current child welfare policy debates. For some measures of well-being new data will need to be generated but in other domains data already exist that are not being put to proper use. For example, Medicaid claims data can and should be used to examine whether children being placed in foster care are given required health and mental health assessments. Children who enter the child welfare system cannot afford to wait another ten years for the managers of the system to begin to seriously assess child well-being.

In summary, I believe that the new child protection review system is a vast improvement over the old system and should be applauded. Nevertheless, our lack of knowledge about child welfare services and populations and the absence of systematic measures of child well-being will limit the meaningfulness of review findings for some time to come.

Chairman JOHNSON of Connecticut. Thank you very much.

I would like to ask the two of you who represent States that were pilot States to comment on Mr. Courtney's testimony because one of the real problems that you run into particularly from the Fed-

eral level is even when you try to establish this kind of system that is more case-sensitive, you do get this one-size-fits-all approach and you get certain unintended consequences.

I think the issue you brought up—you went through them so fast and I hadn't thought about them in advance, so it is hard to grasp them. But the way length of stay could actually disadvantage States that were doing an excellent job and advantage States that maybe aren't doing an excellent job is very concerning.

I know this is also off the top of your head, Ms. Foley and Ms. Hamilton, but, you know, as you listen to the questions that he raises that result from our now knowing a lot more data than we ever knew, but not knowing a lot more "why's" than we ever knew, how would you respond to that?

Ms. FOLEY. Well, I think for me what Mark points out—these are accurate observations, and I think that is the reason we can't simply use the performance report cards to say how well States are doing. Two other examples of that is you can alter length of stay by having a lot of children come into care and go back out quickly. That doesn't mean that that is a good case work practice, but it can drive down your length of time in care. So the volume of children coming in per 1,000 children in your population, I think, is something that has to be taken into consideration when we do the statewide assessments.

Another example is the reentry into care. What we don't want to have is an oral history that begins having a chilling effect on a child who does need to reenter care. And, you know, you can always practice one direction or the other. We often do that with media attention to stories about kids either coming into care or not getting returned home. But I think that has to be part of this broader evaluation, and I still believe that the measurements we have are going to at least move us to having those conversations. Previously, we haven't even been able to talk about those things because we didn't have any measurements that would look across the States.

Ms. HAMILTON. I think I would share Ms. Foley's comments in the sense that I think by looking at just the statewide indicators and the outcomes, although clearly we want to start being able to look at measurements in those areas, it is very difficult to identify across States what is the appropriate length of stay, what is the appropriate time a child should remain in care.

I mean, I think that we need to balance those statewide data indicators along with the case reviews and the case-by-case determinations as to what is in a child's best interest and what makes sense. I am not sure what the answer is to that. I think that the new regulations do try to balance that and I think do identify that, and I think it is a strength that they are focusing at least right now on the outcomes where they think those data elements are at least accurate and can move us along in the direction of measuring data.

Chairman JOHNSON of Connecticut. In looking at length of stay, I know in the hospital area, you know, when we look at DRGs, we take into account the illness. Now, in looking at length of stay for foster children, is there any differentiation between children with severe mental health problems who clearly require a longer length

of stay in a psychiatric setting before moving into what we would normally think of as the system—is there any differentiation in the data sought or in the measures for children of different levels of acuity of need?

Ms. FOLEY. Currently, there is not. The length of time in care measures all children in State custody. We do have some research, though, that is speaking to that. Lynn Usher, at Chapel Hill, has done some research in regard to some of the national foundations in which he is looking at cohorts of children, in other words trying to glean from the data the importance of looking at children who may have entered care in the last 2 years versus children who entered care, as Mark said, 10 years ago or 12 years ago who can be considered outliers to some extent in these systems. So I think there is some research in that area. I don't think our research at this point or our data is fine-tuned to the point that we can capture that.

Chairman JOHNSON of Connecticut. Is there any discrimination as you move into this new system between the kids who have been there and didn't come in with the kind of attention that the new kids are coming in with versus the outcomes for the kids who are coming into essentially a different system?

Ms. FOLEY. Definitely, I think we will see a huge difference.

Chairman JOHNSON of Connecticut. But do you keep the data separately or are we going to be able to see that?

Ms. FOLEY. It can be pulled out separately. You can actually look now at AFCARS and look at entry dates and you can have sub-populations with AFCARS. You can look at who entered within the last year, who entered since the Adoption and Safe Families Act went into place. You can look at adoption as the plan versus other compelling reasons. Eventually, you will be able to look at any reason a child exits and then how long the child was in care based on when they came in and when they exited.

Chairman JOHNSON of Connecticut. Does AFCARS note whether the child has severe mental health problems?

Ms. FOLEY. Yes, it does. I believe it does. Yes, it does.

Chairman JOHNSON of Connecticut. Mr. Courtney is questioning exactly how well AFCAR does this. I have been trying to interpret the nodding of your head, which is neither up and down nor sideways.

Mr. COURTNEY. It has a field for health problems, but this is one of the reasons I said I think we need some measures of well-being because a social worker checking a box saying a child has a health problem—for example, I know from California's data, if you look at that field in AFCARS, you will find that only 5 percent to 6 percent of children have any kind of health or mental problem. And we know that is a gross under-estimate of the health and mental health needs of those children. So the data are there, but whether they are meaningful is another issue.

I do want to throw one other thing in, with all respect to Assistant Secretary Golden. The measures of re-abuse—there are a number of States who cannot generate reliable data on re-abuse, including my home State of Wisconsin. So it is not the case that we have data in all States for that particular measure because there are a number of States that don't keep identifiers with child abuse re-

ports. And so there is no way to know that a child who was previously abused has been re-abused. And the fact that the NCANDS data has an indicator for that again doesn't mean that that is a reliable indicator.

Chairman JOHNSON of Connecticut. Thank you.

Mr. Foxhoven, you have had a lot of experience in sort of reviewing cases from a very different perspective both in terms of the legal framework within which the departments have to work and also other aspects of care and options. How do you respond to the problems associated with one-size-fits-all?

Mr. FOXHOVEN. Well, first of all, I think the rules let a State go to HHS and say you shouldn't apply this strictly to us because we are outside the realm of the norm for this particular reason, we have cut down the number of kids coming into care. So I think the rules do anticipate that. I think they have already intended you to be able to go in and say let us show you that there is a reason why we don't fit into this mold, and I think that seems very appropriate.

But I also think that we need to look at some kind of opportunity to put a bar up for people to reach, as well, and not just to say, well, maybe you haven't done so well in the past, but we are not going to make you meet what everybody else does. It always seems peculiar to me, for instance, that some of the States that do particularly well do some other things. And you will talk to States that don't do well and they say, well, yes, but we can't do that because we have got all these other problems in our program.

And I like to respond maybe that is why they don't have the problems in their program is because they are doing that. The people that hire Ramona Foleys have independent review in their State. So to say we don't have a great program here so we can't afford to start with independent review—well, maybe that is part of it. It is that whole approach of we are going to do whatever is necessary.

Illinois has turned around not only because they have Jess McDonald, but because he has added independent review in there and he is willing to take a look. And so I think that holding a bar up and saying to States that aren't doing very well maybe you need to do more of those things to do a better program—I don't think there is anything wrong with that. A kid that is in Alabama or California or Nebraska or Kentucky should all have the same opportunities and have just as much safety, permanency, and well-being as the ones in the other part of the country.

Chairman JOHNSON of Connecticut. Thank you.

I also want to mention that, Ms. Hamilton, I think your comment about the consent decrees is very, very important for us to note, and for the Department to think through with us as well. Once we have a different system in place and we have a much better information collection capability, and so on and so forth—I mean, Connecticut is in a very, very different situation than we were, when was it, 10 years ago when we had the consent decree, and in a sense constantly serving two masters with the different things, and a core system that has some knowledge, but after all this is not their area of expertise. This does concern me.

And there are a lot of States with consent decrees and there is a lot of resource waste that is going on in this situation. And I think we need to come up with a process by which those States get reintegrated into our system and can work their way out from under consent decrees. I think it is sort of too much to ask any judge to say now this department no longer has any problems and so should be free of the consent decree. That is just not realistic.

So I am very interested in pursuing that, and hope that we will have a vehicle this year. I had kind of lost track of that issue, but it is very important and these regulations give us a chance to reconsider that.

Mr. Cardin.

Mr. CARDIN. Thank you, Madam Chair.

Mr. Foxhoven, I am interested in your assessment that it could be three to 5 years before we see improvements where a State has been identified with the need to make mandatory program improvements.

My understanding—and I was listening to the testimony of all four of you—is that the regulation requires that there be quarterly reports on progress and that it cannot be longer than 2 years, and then when child safety is involved it has got to be much shorter than 2 years. So what is your assessment of three to 5 years?

Mr. FOXHOVEN. I come up with that because, first of all, we know that they are not going to start getting the reviews tomorrow and so it is going to take some lag before we even get to these States, and the law has been in effect for a while. First of all, the law has been out there for States to follow for a while.

Second, safety, permanency, and well-being are not rocket scientist ideas that just have been come up with by Congress last year and everybody said, gee, that is a good idea, we should have safety for kids. We have known that since we have taken kids out of home that we should provide safety for them. And the Federal Government has been telling States to do this for years and years and years, so now that the law has passed, even though the regs haven't been in force, the States have known what they have needed to do.

Mr. CARDIN. As I understand it, the standards are not different under this regulation. They have all been legally required as far as child safety is concerned. So the seven standards or goals that are here are not—that is not new by law. What is new here is a process.

Mr. FOXHOVEN. Of evaluating whether the States have met that standard.

Mr. CARDIN. Correct. So when that is fully implemented, when that process is fully implemented, do you still feel that there will that long of a time before a State can change its practices?

Mr. FOXHOVEN. I think there will be a number of States that will come to HHS and say we can't do it in the 2-year time period, and will ask for more time.

Mr. CARDIN. But if it fundamental for child safety, I am not sure that HHS is going to be very sympathetic.

Mr. FOXHOVEN. That might be true, and I guess the question will be what we mean by child safety. And as to permanency, permanency is the other issue, too. The Federal Government doesn't say

to parents, as long as the kids are safe, we don't care how long it takes for you to get your act together. We want permanency for kids, too, and in a 12-month time period, if you don't have some hope of providing that permanency for kids, we tell parents then you are going to lose them because we are going to give somebody else the opportunity to get the permanency for the kids.

And the same thing is true with the States. If they can't provide some permanency for the kids, they need to have a plan that shortens that time period. They have had quite a bit of time to be working on them already, and my position is that when HHS designates that you are substantially out of compliance, they should be getting a plan that gets them back in as quickly as possible.

Mr. CARDIN. Agreed, and three to 5 years would not be acceptable for us. As we look at the regulations and the implementation of the regulations, we are going to be asking for a lot quicker progress made by States in complying with all of the major deficiencies. Two years, we think, is an outer limit to get in compliance. And I appreciate very much your observations and best intentions sometimes can take a lot longer than we anticipate.

Mr. FOXHOVEN. And I will only tell you this. Those of us that are active advocates for children are never totally happy. You are never going to make us totally happy because if three kids are neglected or die in care or don't get permanency, we want those three kids to be saved, and so you are never going to make us all happy.

Mr. CARDIN. And we don't want to. And this regulation speaks to that.

Mr. FOXHOVEN. It is a huge step forward.

Mr. CARDIN. We are never going to be happy because, by definition, 25 percent of the States are going to be out of compliance with each of the 7 standards because if you are not in the 75th percentile, you are out of compliance. And being out of compliance does not mean that you are going to be subject to a penalty; it means that you need to have a plan to improve. And each State is different, so we are never going to be satisfied. I think the regulation incorporates——

Mr. FOXHOVEN. And I am the first to commend HHS. I think the regs are a huge step forward.

Mr. CARDIN. And I must compliment our two State people here because it appears like you are agreeing that we should never be satisfied, even though by definition States will be out of compliance and have to be because of the percentiles.

Ms. FOLEY. That is true, and the other thing I keep going back to is the report cards, the performance measures that are going to be coming out as a result of ASFA. I am not naive. I think that child welfare administrators across the country will have some explaining to do, as we say to Governors. I think Governors are going to pay attention to what is happening, and I think quite likely HHS may begin finding States in slightly better shape by the time they get there for the statewide assessment than they would have absent those performance measurements coming out to the Governors.

Mr. CARDIN. Mr. Courtney, I very much appreciate your testimony because I think we all agree with the essence. But it is important that we have these goals to meet, and during the process,

as I think is your own testimony, the interaction with HHS will help define these goals in a more sophisticated way so States aren't going to be penalized because on one factor they are actually ahead of where other States are. But when you look at it in conjunction with another statistic, it may not look as positive. I think it is a very good point, and we expect that the plans will be very sensitive to that type of an evaluation.

Mr. COURTNEY. Yes, I hope so. My concern is that I don't know that the States—for example, the idea that a State would come forward if it were out of compliance with one or more of these measures, and the fiscal penalties are very clear in the regulation. I would assume then that the State would appeal the fact that they were not in compliance.

My concern is that I believe a number of States would not really have any idea why they were out of compliance. They might actually be running their system quite well, but for some of the reasons I laid out and a number of other reasons I could lay out, they are not in compliance below the 25th percentile and they really don't have the technical expertise to even know why they are out of compliance with that.

And I think that that goes back to my original comment that I think that we are just now getting the data to begin to understand how these systems function. And we see a wide diversity, and some of that diversity is due to systems that aren't functioning well. Some of that diversity is due to the fact that we really don't have a national child welfare system. We have 51 States and the District of Columbia, and then in county-administered systems we have many counties that operate very differently.

And when I say substantiation rates differ, I am saying that that jurisdiction has defined how it is going to respond to child maltreatment differently than the next jurisdiction. This is one important explanation for that. And I am somebody who is actually in favor of having more uniformity in how we provide child welfare services, but I think one of the consequences of having these kinds of outcomes is that, over time, it really will force, I think, States and localities to come to terms with how different they are in terms of how they substantiate child maltreatment, how they define child maltreatment.

I don't know that that was the goal of these regulations originally, but I think that will be one of the consequences of them. I am in favor of that. I just wanted to make the Committee aware that I think that is almost an inevitable outcome of this process.

Mr. CARDIN. It seems like what the regulation has captured is what Mrs. Johnson said at the beginning of the hearing, and that is giving maximum flexibility to our States and our local governments to develop plans that work in your community, but establishing national accountability. And I don't know if we can ask for much more than that, and then have an effective way to enforce that so that we don't have to wait years and what happened in New York is corrected and it doesn't take 20 children being placed before that happens.

Thank you, Mrs. Johnson.

Chairman JOHNSON of Connecticut. Thank you.

I do think, though, Mr. Courtney, that your comments raise an extremely significant issue, and it may be reasonable for us to develop a small pot of research money that we would be able to use when we hit those first States whose numbers don't look very good but whose systems at some level seem right. So we can go back in and say why, you know, what is really happening here, because we know we know very little about the "why's" of some of this.

And from working, frankly, in the Medicare system where now we see us doing an individual thing here that looks good and it is having a terrible effect on the whole system and in the end costing us more money and not saving us money, I think this issue of what really are we doing is always hard. And the diversity in our system may very well be its strength. We don't even know that and numbers may not tell us that.

So I think we need to think about it, and any thoughts any of you would have on how we would structure that pot of money so it will be available when we get a year or two down the road and whenever we realize that we have to know what is behind the numbers, because in a sense it is going to be hard to leave a State holding the bag, in a sense, without any resources to know how or why. So I think that really is very important and we will take that under consideration as well.

Also, Mr. Foxhoven, you mentioned that you would like to write more detailed comments, and we would be interested in having those, and anyone else who wants to add additional comments. We also would like to have you answer some questions in writing because there is not a lot that is known about some of the aspects of your work.

[Questions submitted by Chairman Johnson, and Mr. Foxhoven's responses, follow:]

1. Are you familiar with Senator Grassley's proposal which would have required all states to have independent foster care review boards to cover all children in foster care? As I understand this proposal, states would be required to use foster care review boards to review children in foster care every six months? Under current law states have this option. How many states use foster care review boards to review all cases of children in foster care every six months? How many states have statewide review boards? Does Iowa?

Response:

I am very familiar with Senator Grassley's proposal. The Board of Directors of the National Association of Foster Care Reviewers has voted to support that proposal. Your understanding of the proposal as well as the background giving rise to the proposal is partially correct and partially in error. Current federal law does give the states the option to use foster care review boards to conduct a review of children in foster care. However, the idea of review of all children in foster care is not an option for states who wish to receive federal funds for foster care services -it is a requirement. How states elect to conduct case reviews varies. Some states use judicial review, some citizen review, some administrative review, and some a combination. There is also some question as to whether some states are reviewing all children every six months under any form of review system, even though it is required. The Grassley proposal requires states to have a two-tiered structure: a state governing board (State Independent Foster Care Review Board) and a mechanism to review individual cases of children in foster care which can be administrative, judicial, citizen or some combination of these structures. The goal is not only to insure review of all children in foster care every six months, but also to provide an independent collection of data, as well as an independent analysis of that data for use in improving state practice and policies in a manner that will improve outcomes for children in care.

A survey conducted by the National Association of Foster Care Reviewers in 1996 revealed the following about the states' efforts to meet the federal requirement for 6 month periodic reviews:

- 14. 3% of the states use citizen foster care review boards.
- 23% of the states use judicial review .
- 12. 5% of the states use administrative review structures.
- 50. 2% of the states use a combination of the above.

Currently, only about 9 states use foster care review boards to review all cases of children in foster care every six months on a statewide basis. In most of the states where foster care review programs are being used, the program is being systematically expanded with a goal of eventual statewide coverage. This is true in Iowa. Iowa's citizen foster care review board conducts a registry statewide to provide independent data. The reviews themselves are conducted in only a portion of the state. A plan is in place for eventual expansion to all areas of the state. Currently, in some areas of Iowa, the citizen's foster care review board reviews all children in care every six months. In the areas where the board has just recently been expanded, the boards do not yet review all cases, but will do so in the near future. Cases not reviewed by the review board are reviewed by one or more of the other forms of review. I am including a color-keyed map of Iowa showing the presence and function of the foster care review board in Iowa at this time.

2. Foster Care review programs are emerging in many states, but it seems that these programs are varied in size, structure and scope. Only 25 jurisdictions have foster care review boards in place, with some operated by the courts, some by non-profit agencies, and some by the state agencies. Who pays for foster care review boards? Who pays for the training of volunteers and staff? How is the National Association of Foster Care Reviewers funded?

Response:

In the case of the foster care review boards that are operated by non-profit agencies, the cost of the program is funded, at least in part, by private resources. As such, generating the funds necessary is a recurring problem for those programs. The rest of the programs, like all public child welfare services, are funded by the taxpayers in one form or another. Periodic case review in any form is an administrative function that is eligible for reimbursement under Title IV-E. States that use an administrative structure, rather than foster care review boards, to conduct reviews use Title IV-E to cover the costs associated with the periodic reviews. Likewise, most, if not all, of the citizen review programs use a combination of state dollars and IV-E dollars drawn down through their state child welfare programs. Training of reviewers, whether administrative and/or citizen volunteers, is part of the cost of the program. Training of reviewers, which is included in the state's IV-B plan, is reimbursable under Title IV-E as well.

The National Association of Foster Care Reviewers is a not-for-profit organization. We are not currently funded by any governmental appropriation. Our funding is currently derived from the following sources:

- 70% from training and consultation contracts;
- 25% from donations from private foundations; and
- 5% from membership dues.

3. Some foster care review boards have been in existence for 20 years. Are you aware of any independent evaluation of the effectiveness of these boards?

Response:

Because the Social Security Act has required periodic review of all children in foster care at six-month intervals since 1980 with the passage of P.L. 96–272, theoretically all foster care review programs should have been in existence since that time (or 20 years). In the past, the framework of evaluation of all review programs has been to try to directly link review and the reduction of length of stay and permanency. The truth is that there are multiple variables which affect these child-specific outcomes. Outcomes of review programs have more to do with supporting effective decision-making of those who have the authority and responsibility for case practice and policy and for motivating case and system stakeholders to perform essential activities which will lead to better outcomes for children in care. I am aware of six research articles examining different aspects of periodic reviews. Unfortunately, none of these had a control group. Those research articles are as follows:

• Wert, Sue E.; Fein, Edith; Haller, Wendy; "Children in Placement (CIP): A Model for Citizen-Judicial Review," *Child Welfare*, Volume LXV, Number 2, March-April 1986.
• Leashore, Bogart R.; "Workers' Perceptions of Foster Care Review in the District of Columbia," *Child Welfare*, Volume LXV, Number 1, January-February, 1986.
• Ross, R. Danforth; Reif, Janice C.; Farie, John C.; "Special Report: An Administrative Intercase Review System That Works," *Child Welfare*, Volume LXVLI, Number 5, September-October 1987.
• Lindsey, Elizabeth; Wodarski, John; "Foster Family Care Review by Judicial-Citizen Panels: An Evaluation," *Child Welfare*, Volume LXV, Number 3, May-June 1986.
• Gambrill, Eileen; Stein, Theodore J.; *Controversial Issues in Child Welfare*, "Have External Review Systems Improved the Quality of Care for Children?," (Allyn and Bacon).

The National Association of Foster Care Reviewers is currently under contract with a review program to develop tools to assess the process and outcome efficiency as well as the effectiveness and customer satisfaction of their program, as well as the role and function of the review program in supporting and informing case and system decision-makers in their efforts to make sound decisions. Several foster care review programs have begun surveying the customers of their programs (the decision-makers, caseworkers, supervisors, judges, and policy makers) to determine if and how they use the information and reports generated by review programs and what additional information is needed to make better decisions. This is being done in Arizona, Miami-Florida, and Delaware, as well as some others.

4. You mention in your testimony that a set of foster care review guidelines have been developed. How are these guidelines being disseminated and used? What resources are available to foster care reviewers for learning about best practices? Are these guidelines voluntary? Are foster care review boards accredited? By whom?

Response:

In 1995, the National Association of Foster Care Reviewers signed a three-year cooperative agreement with the Children's Bureau, requiring the Association to develop the following:
• Guidelines for foster care review administration;
• Training materials; and
• The capacity to provide technical assistance to the states for foster care review.

Under the cooperative agreement, the project was completed, and the Children's Bureau "signed off" on the completed project. The Guidelines are a voluntary "best-practices guide" for review of children in foster care. A copy of the guidelines, entitled "Safe Passage to Permanency—Guidelines for Foster Care Review," is enclosed for your review. There are currently no federal resources being invested in the dissemination of the products and tools developed through this cooperative agreement.

The National Association of Foster Care Reviewers is committed to the dissemination of the guidelines and their implementation. The Association has sent copies of the guidelines on a complimentary (free) basis to foster care review administrators. The Association has also provided the funding for a monthly roundtable meeting of administrators which includes an examination of different aspects of the guidelines. The guidelines are, therefore, being used as a benchmarking tool for states and foster care review programs. The administrators are able to ask themselves how they compare to best practice.

State programs are currently contracting with the National Association of Foster Care Reviewers for a number of services, including the following:
• An assessment of the state's existing foster care review program to assist the state and/or community in improving their review capacity;
• Training for foster care reviewers (various levels of curriculum have been developed);
• Technical assistance in data collection, program assessment, and outcome measures.

Foster Care Review Programs are not currently accredited by anyone. The National Association of Foster Care Reviewers is currently exploring the development of a voluntary, accreditation program to be administered by the Association that will base accreditation upon compliance with the guidelines. It is anticipated that this program will not begin for at least one to two years.

5. How do foster care reviewers define independence from the state child protection system? Who appoints reviewers? Do you recommend that

boards include a certain number of foster and adoptive parents? How many?

Response:

The National Association of Foster Care Reviewers believes that the essential features that insure a review program's independence are the following:

- The foster care review program (regardless of structure) does not report to the entity or individual who is directly responsible for child welfare practice;
- The individual case reports and aggregate system reports have uninterrupted access to all system stakeholders, including the public. There can be no filtering of information.
- The foster care review program has an independent budget that can not be controlled or influenced by an individual or entity over whom the review program is responsible for providing oversight or of whom the review programs recommendations could impact.
- The governing board of the foster care review program is comprised of individuals who have no vested interest in the outcomes of individual or aggregate review reports (such as state employees or contractors).

It is important not to confuse the two tiers of the review program, as explained in the answer to question 1: the state governing board and the mechanism to conduct reviews. The guidelines, and hence the National Association of Foster Care Reviewers, does not recommend who should be a reviewer or who should appoint the reviewers. The person or persons conducting the reviews may be citizens, staff or employees of the child welfare agency, and/or judges. Furthermore, the reviewers may be appointed by various sources. Currently, reviewers are appointed by various sources in various states (e.g., the Judge, the Chief Judge, the Governor, or local officials). The Association does not take a position on who should conduct the reviews, who should appoint reviewers, or what the makeup of the state governing board should be, so long as the review program meets the independence requirements set forth above.

6. What would it cost to review every case every six months?

Response:

We assume that the Children's Bureau or the Office of Management and Budget can give you costs that are currently expended for the review of children in care. Since the law already requires that the states review all children in foster care at least once every six months, there should be relatively little, if any, additional cost to switch to a different review system. Of course, a quality review, as described by the guidelines, would be more expensive than any review that is more of a guise than an actual review. However, the Association assumes that the Children's Bureau, in an audit, would require that all reviews be quality reviews and not a sham. The only additional cost would be the cost necessary to transform a poor review program into a quality one, which would have to take place in any event upon a quality audit by the Children's Bureau.

Thank you for giving the National Association of Foster Care Reviewers this opportunity to provide this additional information to you. We would be more than willing to provide additional written and/or oral testimony upon request.

[Attachments are being retained in the Committee files.]

Chairman JOHNSON of Connecticut. I meant to mention this when Secretary Golden was here, so if you will carry this back to her. Many of you who have watched the work of this Committee, including our hearing over in Baltimore last Monday, but also our work on the fatherhood bill and a number of other settings—there has been a lot of concern both on my part and on Ben's part with the distribution rules. And I was pleased to see that in the President's budget proposal, the Department is proposing some new approaches to distribution of child support arrearages and payments.

So we are developing legislation on that. We have a lot of ideas between us to go forward with that. The administration's proposals are also being thought about. So we will be moving forward and I

wanted to mention that because the timeframe of this session is who knows what, but it might be short. And so we are moving rapidly to get ideas in that area particularly more solidified because we hope to be able to move forward on some of those issues.

So thank you very much, those of you who testified. I appreciate your input and your thoughts, and we look forward to working with you. And thanks to the Department and those who worked so hard on these regulations.

Thank you.

[Whereupon, at 10:46 a.m., the hearing was adjourned.]

[A submission for the record follows:]

Statement of William Grimm, National Center for Youth Law, Oakland, California

On behalf of the National Center for Youth Law, I am submitting this written statement for the record of the hearing conducted on February 17th, 2000. In the announcement of the hearing, Congresswoman Johnson asked if the Child Protection Review System as set forth in the final regulations published on January 25, 2000, would "get the job done." Based upon our more than fifteen years of experience litigating cases against state child welfare agencies on behalf of abused and neglected children, we believe that they will not get the job done. While the system outlined in those regulations is a vast improvement over the previous 427 reviews conducted by the agency and has the goals of increasing the scrutiny and accountability of child welfare systems, it is unlikely that these goals will be achieved. The process is seriously flawed and its full implementation is likely to be stymied by any state agency found out of compliance with the mandates of the statute. In the following paragraphs, we set forth some of the reasons why we believe that the new system is flawed.

The National Center for Youth Law (NCYL) is a non-profit advocacy organization located in the San Francisco Bay Area which for more than twenty five years has represented the interests of children living in poverty. For almost twelve years I have led NCYL's advocacy on behalf of children and youth who have been abused or neglected and those placed in foster care. I have been lead counsel in federal civil rights cases brought in three states on behalf of this population of vulnerable children and have worked with attorneys involved in similar cases in many other jurisdictions. As counsel in those cases, I have conducted extensive discovery—both formal and informal—related to the operation of state child welfare agencies and studied their compliance with federal statutory and constitutional provisions. During the last few years, NCYL has worked closely with foster parents in several states. Under a grant from the Packard Foundation, we are providing support and training for foster parents to help them exercise their rights to participate in hearings concerning the children placed in their homes—one of the mandates of the Adoption and Safe Families Act of 1997. Several months ago, NCYL convened a meeting of the attorneys in the country who have sought to enforce the provisions of Titles IV–E and B through a variety of strategies, including class action litigation.

The regulations establishing a child and family services review system are long overdue. Under Section 203 of the Social Security Act Amendments of 1994, Congress directed that HHS promulgate regulations for the review of state programs funded through Title IV–B & IV–E. Congress imposed a deadline for the final regulations of July 1, 1995, with an effective date not later than April 1, 1996. Four years past the deadline, the outline of the review system is in place. During this time, thousands of children have spent their early childhood caught up in child welfare systems that have not protected them nor provided them with either stability or permanence. We mention this history because it is indicative of the lack of priority placed by HHS upon oversight and monitoring of child welfare agencies. It is evidence that there has been little sense of urgency at HHS to resume its role of protecting children through ensuring that states adhere to the promises implicit in their acceptance of federal funds. It suggests that any assumptions that that same agency will now faithfully, diligently, timely, and aggressively implement the review system it took so long to devise are not warranted. But there are other reasons to be cautious in the endorsement and enthusiasm about the new review system.

Absence of Sufficient Resources to Conduct the Reviews

Child and Family Services Reviews (CFSR) consist of two phases—a statewide self-assessment and an on-site review. The on-site review includes a sample of 30–

50 cases for which multiply sources of information must be collected. This cumulative information about the child, his/her family, agency, and service providers is then used in determining substantial conformity. For each case in the sample, the file must be reviewed and interviews conducted with the child, family, foster parents(s), caseworkers, and service providers. Additional non-case specific interviews with *key stakeholders* such as children's guardians ad item, court personnel, and administrative reviewers must be completed.

Prior to the final adoption of the CFSR, HHS conducted pilot reviews in twelve states. In the preamble to the final rule, HHS points out that it "learned that reviewing cases intensely, including all the relevant interviews, requires a large number of staff resources and is an extremely time-consuming process." Our experience with similar process used by court-appointed auditors in Arkansas, one of the state's operating under a consent decree, confirms the amount of resources needed to conduct such a review.

We question whether HHS has the staff and resources to conduct the kind of full reviews it calls for in the regulations. Even if they presently have adequate resources to complete the sample of 30–50 cases, in light of their statements in the preamble, it is a certainty that the agency does not have the resources to review a larger sample. Under the existing CFSR scheme, the state may compel HHS to review triple the number of cases in the original sample in order to resolve discrepancies amidst the data used to determine substantial compliance. Assistant Secretary Golden in her comments before the Committee on February 17th, concedes that with current resources, increasing the sample size would inevitably compromise the quality of the review. We also are concerned that if HHS staff resources are not sufficient, the agency may respond by reducing the number of federal staff on the review teams. These concerns about the objectivity of the teams we address further in a later section.

The Order in Which Reviews are Conducted

Within four years of the effective date of the final rule, a full (CFSR) review of each state must be completed. Assistant Secretary Golden told the Committee on February 17th, that the agency "will conduct initial child and family service reviews in 17 States per year, beginning immediately to work with the group of states that will be completed in FY 2001. We expect that this group will complete the statewide assessment this year and be ready for on-site reviews early in FY 2001." Nowhere in the regulations or the preamble is there any suggestion of what criteria will be used to select the first 17 States. Assistant Secretary Golden does suggest that there are criteria the agency is using to select the States but her testimony refers only to States "with identified safety issues" without giving a hint of how that determination will be made.

Within the regulations setting forth the duration of program improvement plans, there is a requirement that "particularly egregious areas of non-conformity impacting child safety must receive priority. . ." We believe that a similar principle of prioritizations should apply in determining which States to include in the first series of reviews. There are several possible criteria which might be applied here. Although we point out concerns about AFCARS data below, it and NCANDS information might be utilized to select the States for the first reviews. States already operating under a consent decree or judgment and subject to ongoing audits and/or oversight might be deferred to a later group. Since it is not possible to begin all reviews simultaneously, it is critical that HHS establish some rationale basis for selecting one State before another. States in which the ASFA outcome measures suggest greater risks to children and a failure to achieve the goals of safety, permanency, and child well-being should be elevated to the top of the list.

Methodology Assures Challenges to Non-Compliance Findings

Although the on-site review must "cover the State's programs under titles IV–B and IV–E of the Act, including in-home services and foster care," it calls for a sample of cases no larger than 50 and as small as 30. HHS points out that there were "strong concerns" about the sample size of 30–50 cases. Commenters complained that it "may not be representative of the State's service populations," it "would not lead to credible judgements of substantial compliance", would not be "statistically valid", and would generate only "anecdotal evidence."

This summary echoes the comments submitted by the American Public Human Service Association to the proposed regulations. APSHA's letter to HHS on behalf of this public agency members contains multiple references to the sample size. At one point it wrote that "the sample size of cases must be representative of the state-otherwise the information is anecdotal at best, and we question how a judgment of conformity can be credibly made." Later it cautions that "the statistical validity of

the sample size. . . [is] inextricably linked to a fair and effective review system" and questions again if "a small sample size [can] accurately reflect the totality of the system?"

These comments provide a good idea of how state administrators will respond to a finding of non-compliance which uses this small sample as part of the underlying basis for the finding. To those of us who have brought lawsuits on behalf of the children harmed by state child welfare systems, these are familiar complaints. The refrain is the same. The named plaintiffs are not representative of children in foster care. The information in the complaint is only anecdotal. We believe that the comments criticizing the small sample size are a warning, a harbinger of the state's challenge to findings of non-compliance. As HHS seeks to hold agency's accountable for compliance with the law, they will encounter that same arguments faced by the plaintiffs in the litigation brought to enforce those laws.

For any state found out compliance, we foresee automatic challenges to the findings and a demand for additional case reviews. These additional case reviews will result in significant delays in completion of the CFSR and the development and implementation of any program improvement plan. While the dispute or discrepancy over a finding of non-compliance remains unresolved, there is no provision for any program improvement plan or partial plan to be required during this time. HHS' hands are tied during this time. The delays implicit in this system are significant.

Limitations of the AFCARS Data

HHS will use certain statewide data indicators that are drawn from the ASFA outcome measures in assessing States' performance. These data indicators, though not set forth in the regulations, are described in the preamble and mentioned in Assistant Secretary Golden's testimony. They include such things as repeat maltreatment of children, length of stay in foster care, and the number of placements experienced by children during a 12 month period while in foster care. States' AFCARS submissions are the data source for many of these indicators.

The regulations also provide that AFCARS data will be used to establish the national standard against which state compliance, in part, will be measured. The "initial national standards for the statewide data indicators will be based upon the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS."

We share the concerns of others who expressed a lack of confidence in the reliability of data drawn from AFCARS. We cite just a few examples from our work around the country.

One of the performance indicators relates to placement stability. It asks "of all children served who have been in foster care less than 12 months from the time of the latest removal from home, what percentage have had not more than two placement settings?" From our conversations with foster parents, our review of records, and our discovery in litigation, we believe that this data collected and submitted by the States as part of their AFCARS submission, is inaccurate. Oftentimes, it appears that shelter care and other brief placements are not included in the count. Sometimes, if the agency does not pay foster care maintenance payments for the placement, it does not show up in the count. A study which we recently obtained in litigation pending in the State of Washington raises similar issues about the accuracy of placement setting data.

Another of the performance indicators relates to repeat abuse and/or neglect. It asks "of all children who were victims of substantiated or indicated child abuse and/or neglect during the period under review, what percentage had another substantiated or indicated report within a 12-month period?" We are concerned that as more states adopt systems for diverting some child abuse/neglect reports from the normal investigative process that the states' data on substantiated reports will not reflect the true incidence of abuse. For example, recent statutory amendments to the child protective services law in Nevada allow the agency, under certain circumstances, to provide counseling, training, or other services to the family in lieu of completing an investigation of the complaint. In these situations, even though abuse or neglect may have occurred, there is no official finding, no determination of whether or not the abuse was substantiated. Several other states have adopted similar dual response systems. At a recent presentation during the annual conference of the Child Welfare League of America, the speakers described an Alternative Response System being developed in California. In that system, some of the reports called into the hotline that meet the statutory definition of abuse/neglect are diverted from the investigative process to contracted community-based services. No formal investigation is completed and no finding—substantiated or un-substantiated—is made. As a consequence, repeat incidents of abuse do not get into the state's central registry and the data on reabuse of children is incomplete. We do not

mean to suggest that these alternative responses may not be a suitable innovation. There is, however, littler independent evaluation of these systems. In any case, they have an impact upon the accuracy of data concerning the incidence of abuse.

Finally, we question the utility of measuring the safety risks to children in foster homes by simply using data on the percentage of children in care who were the subject of substantiated or indicated maltreatment by a foster parent or facility staff. First of all, this measure, by its terms, excludes incidents in which one child in the home or facility is mistreated by another child in the facility. Unfortunately, this is an all too real risk to children in and out of home placement. Secondly, our discovery in at least one case has confirmed that while the official reports of abuse or neglect in foster homes were not substantiated, there were substantial violations of licensing standards which placed the foster children at risk. Finally, our interviews with children in foster care confirm that they often do not report the abuse and neglect that occurs in out of home placements.

Objectivity in the Review Process

The CFSR requires that the reviews be conducted by a team with members chosen from four groups. HHS staff are one of the groups. The three remaining groups include staff of the agency that is being evaluated, representatives selected by the State, and other individuals to whom the State must agree.

The objectivity of the persons entrusted with performing the reviews is critical to the integrity of the process. My own experience with internal quality assurance programs in several states has reaffirmed this principle. Congress recognized the importance of wholly external reviewers with it gave HHS the authority to grant demonstration waivers but required that the State obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary. The importance of having reviews conducted by persons other than the agency or its appointees is implicit in other parts of the statute as well. Permanency hearings must be conducted by the court or an administrative body appointed or approved by the court. When so much is at stake, triggered by a finding of non-compliance—mandatory program improvement, increased federal scrutiny, loss of federal funds—there is a great impetus to find—there is a great impetus to find compliance. Insulating the process from bias is key if there is to be confidence in the results.

Futhermore, we agree with HHS' conclusion that the review process needs to evaluate the quality of the decision-making process and service delivery expected of caseworkers. For this task, HHS points out that we must be willing to accept the professional judgement of reviewers in determining substantial conformity. This assessment of quality and its dependence upon the subjective judgement of reviewers makes the selection of teams members from outside the agency all the more critical.

We appreciate the opportunity to share our concerns and suggestions with the Committee.